

BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

5 In the Matter of: )  
6 )  
7 Application for )  
8 Certification for ) Docket No.  
Mariposa Energy ) 09-AFC-3  
9 Project )  
\_\_\_\_\_ )

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12 CALIFORNIA ENERGY COMMISSION

13 1516 9TH STREET

14 SACRAMENTO, CALIFORNIA

15 MONDAY, MARCH 7, 2011

16 10:06 A.M.

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25

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1 APPEARANCES

2 COMMITTEE MEMBERS PRESENT

3 Karen Douglas, Associate Member

4

5 HEARING OFFICER AND ADVISERS

6 Kenneth Celli, Hearing Officer

7 Galen Lamei, Advisor

8 Paul Feist, Advisor

9

10 STAFF AND CONSULTANTS PRESENT

11 Kerry Willis, Counsel

12 Craig Hoffman, Project Manager

13 Jennifer Jennings, Public Affairs

14 Lynn Sadler, Public Affairs

15 Matthew Dowell

16

17 WITNESSES

18 Kristen Ford

19 Sara Keeler

20 Mark Lindley

21 Amanda Stennick

22 Rick Tyler

23 David Vidaver

24

25

1 APPEARANCES CONTINUED

2 APPLICANT

3 Gregorry Wheatland  
4 Samantha Pottenger  
Ellison, Schneider & Harris  
5 Chris Curry, Mariposa Energy, LLC

6 WITNESSES:

7 Thomas Priestly  
8 Fatima Yusuf

9  
10

11 INTERVENORS

12 Alan Carlton, Sierra Club California  
13 Rajesh Dighe  
14 Morgan K. Groover, Mountain House Community Services  
District  
15 Jim Lamb, Mountain House Community Services District  
16 Edward Mainland, Sierra Club California  
17 Robert Sarvey  
18 Robert Simpson  
19 Jass Singh  
20 Andrew Wilson, CalPilots

21  
22 ALSO PRESENT

23 Scott Galati, PG&E

24

25

1	APPEARANCES CONTINUED
2	
3	PUBLIC COMMENT
4	Simone Estavilla
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6	Susan Sarvey
7	Valentina Sefujuku
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1 PROCEEDINGS

2 HEARING OFFICER CELLI: Good we have,  
3 Commissioner Douglas is here. Thank you.

4 COMMITTEE MEMBER DOUGLAS: Good morning,  
5 everybody. Welcome back to the evidentiary hearing on the  
6 proposed Mariposa Energy Project.

7 I am Commissioner Karen Douglas. I'm the  
8 Presiding Member of this Committee.

9 To my left is our Hearing Officer, Ken Celli.

10 To his left is my advisor, Galen Lemei.

11 And to our far left on this table is my advisor,  
12 Paul Feist.

13 Eilene Allen, who is working with me on this  
14 case, may come in later and take her seat, to my right.

15 At this point, let me ask the parties to  
16 introduce themselves, beginning with the applicant.

17 MR. WHEATLAND: Good morning. I'm Gregg  
18 Wheatland, the attorney for the applicant.

19 MR. CURRY: Good morning, Chris Curry, applicant.

20 MR. SARVEY: Rob Sarvey, intervenor, member of  
21 the public.

22 MR. GROOVER: Morgan Groover, intervenor.

23 MR. WILSON: Andy Wilson, California Pilots  
24 Association, also known as CalPilots.

25 HEARING OFFICER CELLI: You need to turn your



1 mike on by pressing the red button down there at the  
2 bottom. When the red light is on, that's how you know  
3 your mike is working.

4 MR. CARLTON: Alan Carlton, Sierra Club,  
5 intervenor.

6 MR. MAINLAND: Ed Mainland, Sierra Club,  
7 intervenor.

8 MR. SIMPSON: Rob Simpson, intervenor.

9 STAFF COUNSEL WILLIS: Good morning. Carry  
10 Willis, Senior Staff Counsel. And with me is Craig  
11 Hoffman, Project Manager.

12 COMMITTEE MEMBER DOUGLAS: Thank you.

13 Are there any representatives of State or federal  
14 government agencies here today?

15 Are there any representatives of city departments  
16 or Water Boards?

17 MR. GROOVER: My understanding is that Mountain  
18 House CSD elected official Jim Lamb will be here in a few  
19 minutes. He's trying to find a parking space.

20 COMMITTEE MEMBER DOUGLAS: Thank you.

21 I'll turn this over to Ken Celli.

22 HEARING OFFICER CELLI: Thank you. Good morning,  
23 everybody. I hope you can all hear me clearly.

24 Basically, we sent out an e-mail on March 4th  
25 that stated that the way that we will proceed today is

1 we're in the middle of cross-examination on  
2 socioeconomics. After that, we'll take evidence on all  
3 tentatives, followed by hazardous materials. Then I have  
4 put in cross-examination of plume evidence by Will  
5 Walters, whenever we can get to that -- I didn't assign  
6 times -- biological resources, soil and water resources,  
7 worker safety and fire protection, and visual resources.

8 Now, before we went on the record, Mr. Sarvey and  
9 I and the applicant were having a discussion that there is  
10 a new -- and I've received a new staff suggested revised  
11 Visual 6 for landscaping.

12 So, Mr. Sarvey, does this mean that you're  
13 willing to accept Visual 6 and we remove that as a topic  
14 for as a disputed topic?

15 MR. SARVEY: Our -- I want to ask the biology  
16 staff about it and what their input is going to be. But  
17 tentatively, I've said yes.

18 HEARING OFFICER CELLI: Thank you. And that was  
19 acceptable to the applicant?

20 MR. WHEATLAND: Yes, it is.

21 HEARING OFFICER CELLI: Excellent. Thank you for  
22 working cooperatively. Greatly appreciate that.

23 I'm told I have to bring my mike in closer.

24 STAFF COUNSEL WILLIS: Mr. Celli, just as a point  
25 of clarification. Does that mean our visual staff is

1 excused?

2 HEARING OFFICER CELLI: Yes, it does, because  
3 it's no longer a matter in dispute.

4 STAFF COUNSEL WILLIS: Thank you.

5 MR. SARVEY: I just said I wanted to ask biology  
6 staff some questions, but I have to make sure they're on  
7 board with it.

8 HEARING OFFICER CELLI: Okay. So you are going  
9 to have a chance to talk to biology staff today.

10 Now Mr. Carlton, I'm going to need you to have  
11 you and Mr. Mainland having a mike between you. And I  
12 guess you'll just use that one, Mr. Wilson. And your mike  
13 isn't on, Rob. Actually, the one Rob Simpson has is to be  
14 shared between Rob Simpson and Ed mainland. And then Mr.  
15 Carlton, you're going to share that one with you and  
16 Travis Miller.

17 And Mr. Singh and Mr. Dighe are here. I'm glad  
18 to see you. Mr. Singh, if you would sit next to Mr.  
19 Carlton. Mr. Dighe, if you could sit on the other side of  
20 Mr. Wilson. Thank you for being here. Good morning.

21 So I now have a full house. We have everybody.  
22 Nobody is missing, right? The only person missing is Jim  
23 Lamb.

24 Good morning, everybody. And welcome.

25 So visual is now off the table. That's great.

1           MR. SIMPSON: I am sorry. Do the rest of us have  
2 a say in this or it's just Sarvey?

3           HEARING OFFICER CELLI: He was the only one who  
4 raised it. It went away, yes. The answer is yes.

5           MR. SARVEY: Okay.

6           HEARING OFFICER CELLI: He --

7           MR. SIMPSON: I believe I raised it though.

8           HEARING OFFICER CELLI: No, I did not see that in  
9 your papers.

10           The applicant's witnesses, Mr. Priestly and  
11 Ms. Yusuf are present. They were in the middle of  
12 cross-examination by Mr. Sarvey when we last broke.

13           Before we begin, I wanted to explain on the  
14 record that socioeconomic is a topic area focuses on  
15 pertinent demographic information within a six-mile radius  
16 of the project site. It evaluates the effects of  
17 project-related population changes on local schools and  
18 other public services as well as the fiscal and fiscal  
19 capacities of local government to meet those needs. The  
20 analysis examines both the beneficial impacts on local  
21 finances for property and sales taxes as well as the  
22 potential adverse impacts upon public services.

23           The typical focus of socioeconomic analysis is  
24 the potential influx of workers into the area. Impacts  
25 are considered significant if a large influx of

1 non-resident workers and dependents occurring in the  
2 project area which would increase the demand for housing  
3 or community resources.

4           The socioeconomics analysis will review the  
5 fiscal benefits from taxes and school impact fees, the  
6 non-fiscal benefits of Mariposa's payroll and purchases of  
7 materials and supplies for construction and operation and  
8 the direct, indirect, and induced benefits a raising from  
9 job creation.

10           With regard to environmental justice, section  
11 65040.12 subsection E of the Government Code defines  
12 environmental justice to mean fair treatment of people of  
13 all races, cultures, and incomes with respect to the  
14 regulations -- with respect to the development, adoption,  
15 implementation, and enforcement of environmental laws,  
16 regulations, and policies.

17           In addition, federal guidelines encourage  
18 governmental agencies to incorporate environmental justice  
19 principles and the environmental review of this project.  
20 The record usually contains demographic screening  
21 conducted in accordance with the National Environmental  
22 Policy Act. The purpose of the demographic screening is  
23 to determine whether there exists some minority or low  
24 income population within a six-mile radius of the project.  
25 Minority populations exist for purposes of an

1 environmental justice analysis where either: One, the  
2 minority population of the effected area is greater than  
3 50 percent of the effected areas general population or;  
4 two, the minority population percentage of the area is  
5 meaningfully greater than the minority population  
6 percentage in the general population while other  
7 appropriate unit of geographic analysis or one or more  
8 U.S. Census blocks in the effected area show a minority  
9 population greater than 50 percent.

10           Minority individuals for purposes of this hearing  
11 are those who are members of the following population  
12 groups: American Indian, Alaska native, Asian or Pacific  
13 Islander, black, not of Hispanic origin, or Hispanic.

14           A poverty level population determination is  
15 generally based on the U.S. Census.

16           Please note -- and I'm saying this for the  
17 benefits of Mr. Dighe and Mr. Singh who I think are going  
18 to take the lead today on socioeconomics -- that the  
19 evidence must establish a significant impact before  
20 triggering an inquiry into whether the impact  
21 disproportionately affects minority or low income  
22 populations. So did you get that? Thank you.

23           Now, let's swear the witnesses again, please.  
24 Stand and Mr. Petty, if you would swear the witnesses.

25           (Whereupon the witnesses were sworn.)

1           Mr. petty: Please restate your names for the  
2 report.

3           DR. PRIESTLY: I'm Dr. Thomas Priestly.

4           DR. YUSUF: I'm Dr. Fatima Yusuf.

5           HEARING OFFICER CELLI: Thank you.

6           They were sworn. Okay. Mr. Sarvey, cross was  
7 with you.

8           MR. SARVEY: Mr. Celli, has the intervenor's  
9 motion to have the socioeconomics portion of this and  
10 Mountain House been ruled on yet? I haven't seen it.

11           HEARING OFFICER CELLI: Yes. It was denied. I  
12 sent it out to the POS on I think it was Thursday.

13           MR. SARVEY: I believe they have a second one.  
14 Is that one also denied?

15           HEARING OFFICER CELLI: They're both denied.  
16 We're going to have a hearing and we're going to finish it  
17 today.

18           MR. SARVEY: Is there any opportunity for the  
19 minority public to call in here and give their opinions on  
20 this matter?

21           HEARING OFFICER CELLI: There absolutely is. But  
22 we will probably -- we're going to discuss -- we don't  
23 have a time set for that. It may be at the end of the  
24 hearing. We're not sure. We'll know more as we see who  
25 comes in today and how many people are on the phone.

1           MR. SARVEY: Well, for the public to be prepared,  
2 be shouldn't they have been notified in advance that we're  
3 going to have a public hearing here and they're going to  
4 have an opportunity to comment? Because I didn't see  
5 anything on that.

6           HEARING OFFICER CELLI: They were. It was part  
7 of your notice.

8           MR. SARVEY: Okay. Well, I plan to file a  
9 petition to the full Commission on this ruling. And I'm  
10 going to with hold my questions to the applicant in  
11 anticipation that this hearing is going to be held in  
12 Mountain House. But I will cross-examine staff. So at  
13 this point, I have no questions for the applicant. Thank  
14 you. And I withdraw my question that I had pending.

15           HEARING OFFICER CELLI: Thank you.

16           Mountain House, questions for these witnesses?

17           MR. GROOVER: None.

18           HEARING OFFICER CELLI: Rajesh Dighe, questions  
19 for these witnesses?

20           DR. YUSUF: Excuse me, Dr. Priestly is having a  
21 hard time hearing. Could people speak up, please?

22           HEARING OFFICER CELLI: There is no question in  
23 the air, yet.

24           Mr. Dighe, the cross-examination is with you.

25           MR. DIGHE: Yes, give me a second.



1 HEARING OFFICER CELLI: He's gathering his notes.

2 DR. PRIESTLY: There is a fan back here creating  
3 a lot of noise.

4 HEARING OFFICER CELLI: If you wish, Mr.  
5 Priestly, why don't you stand up? Come on forward. I'd  
6 like you and Ms. Yusuf, you can stand. Walk the podium.  
7 You can use the podium if you want. Pass that microphone  
8 back and forth as needed and speak directly into the  
9 microphone and hopefully you'll be able to hear better.  
10 You're right under a speaker, so you should be able to  
11 hear just great.

12 MR. DIGHE: Should I start?

13 HEARING OFFICER CELLI: Yes. Go ahead, please.

14 CROSS-EXAMINATION

15 MR. DIGHE: Are you aware of the foreclosure  
16 crisis in Mountain House and that Mountain House is 2.5  
17 miles close to this proposed power plant?

18 DR. PRIESTLY: Yeah, I do apologize, but the  
19 question wasn't audible enough for me to really follow it.

20 HEARING OFFICER CELLI: Please ask the question  
21 again, Mr. Dighe. He didn't hear you.

22 MR. DIGHE: Are you aware that Mountain House was  
23 in foreclosure and do you know that the community is 2.5  
24 miles close to the proposed MEP power plant?

25 DR. PRIESTLY: Now that the microphone is

1 working, I'm sorry to ask you to do this. But if you  
2 could start the question from the beginning so I get the  
3 whole thing. I do apologize.

4 MR. DIGHE: That's okay. Are you aware of the  
5 foreclosure crisis of Mountain House -- home foreclosure  
6 crisis of Mountain House and Mountain House is 2.5 miles  
7 close to the MEP?

8 DR. PRIESTLY: Yes, I'm aware of that.

9 MR. DIGHE: Thank you.

10 Are you aware of the business activity in  
11 Mountain House and there is no business activity in  
12 Mountain House. Are you aware of this? There are  
13 basically no big businesses in Mountain House. Are you  
14 aware of that?

15 DR. YUSUF: No, I'm not.

16 MR. DIGHE: Are you aware of the high property  
17 taxes in Mountain House, (inaudible) including the special  
18 tax?

19 DR. YUSUF: No, I'm not.

20 MR. DIGHE: Are you aware of the high water  
21 (inaudible) which goes into the water bills in Mountain  
22 House?

23 DR. YUSUF: Could you repeat that question,  
24 please?

25 MR. DIGHE: The Mountain House community is 2.5

1 miles close to MEP. Are you aware of the high water bills  
2 which is huge and which has a big (inaudible) of the  
3 developer? Are you aware of that?

4 DR. YUSUF: No, I'm not.

5 MR. DIGHE: Are you aware that the Mountain House  
6 people are struggling with their bills and with their  
7 payments and not that MEP is going to be close to that --

8 MR. WHEATLAND: I'm going to object to these  
9 questions that thinks a series of questions that are  
10 assuming facts not in evidence.

11 HEARING OFFICER CELLI: Sustained.

12 Next question.

13 Sorry about that, folks.

14 All right. Problem solved. Let's get back to  
15 it, folks. Go ahead.

16 MR. DIGHE: Are you aware that the Mountain House  
17 residents love AB -- State AB 32 and love almost zero gas  
18 emission and that's what (inaudible)?

19 MR. WHEATLAND: Objection. Assumes facts not in  
20 evidence.

21 HEARING OFFICER CELLI: What was the question  
22 again, Mr. Dighe? Please speak really right into your  
23 microphone and as clearly as you can.

24 MR. DIGHE: Are you aware that the Mountain House  
25 community is in favor of the State AB 32 reduction of the

1 gas emission and support that and now that they're going  
2 to see the MEP gas emission --

3 MR. WHEATLAND: Objection. Assumes facts not in  
4 evidence.

5 HEARING OFFICER CELLI: Sustained. And  
6 argumentative.

7 Next question, Mr. Dighe.

8 MR. DIGHE: Have you considered of the mind-set  
9 of the people when you considered the socioeconomic effect  
10 on Mountain House? Yes or no?

11 DR. YUSUF: No.

12 MR. WHEATLAND: If you want to explain, you can.

13 DR. YUSUF: Yes. When we were looking at the  
14 socioeconomic impacts of a project, we are looking at  
15 changes to the environmental, physical environmental.  
16 We're not looking at people's perceptions or people's  
17 feelings or anything of that kind. Truthfully, it's kind  
18 of hard to put -- measure what that would be.

19 MR. DIGHE: Did you talk to -- how many people of  
20 Mountain House did you talk to when you considered the  
21 socioeconomic?

22 DR. YUSUF: I personally did not talk to  
23 anyone --

24 MR. DIGHE: Thank you.

25 DR. YUSUF: Excuse me. Can I elaborate?

1 HEARING OFFICER CELLI: Yes, you may answer the  
2 question.

3 You need to allow them to answer the question  
4 before you start.

5 MR. DIGHE: It's yes or no.

6 DR. YUSUF: I did not talk to anybody  
7 particularly at Mountain House in the sense that somebody  
8 in the community. But I did talk to somebody at the  
9 school district, because part of my analysis involves  
10 talking to members of the community that provide public  
11 service providers. So part of my analysis included  
12 conversations with those public service providers.

13 HEARING OFFICER CELLI: Thank you. Go ahead, Mr.  
14 Dighe.

15 MR. DIGHE: Are you aware there is no retails, no  
16 grocery stores in Mountain House and this MEP is not going  
17 to help anything? Yes or no? And let me (inaudible) are  
18 you aware there is no retail, no grocery stores, no  
19 businesses in Mountain House which for public right now  
20 and they go to Tracy. Are you aware of this?

21 DR. YUSUF: No, I'm not.

22 MR. DIGHE: Do you think MEP is going to help  
23 limit this cost?

24 MR. WHEATLAND: Objection. Vague.

25 HEARING OFFICER CELLI: The question was: Do you

1 think the MEP will help with these in -- I didn't hear  
2 that last word, Mr. Dighe.

3 MR. DIGHE: Do you think MEP is going to help  
4 this major public needs of Mountain House?

5 HEARING OFFICER CELLI: With the public needs.

6 DR. YUSUF: Could you specify what the public  
7 needs are?

8 MR. DIGHE: They need a grocery store. They need  
9 a pharmacy that (inaudible). Very basic needs of Mountain  
10 House.

11 DR. YUSUF: That was not part of my analysis.

12 MR. DIGHE: Thank you.

13 DR. YUSUF: I'm sorry to say.

14 MR. DIGHE: Are you aware of the racial  
15 demographics of Mountain House?

16 DR. YUSUF: I'm aware of the fact that there is  
17 diverse population of Mountain House based on the  
18 observations I made during the last two days of hearings  
19 we had at BBID. But I can't stipulate --

20 MR. DIGHE: Did you also take the Census 2000  
21 data in your consideration when you did your analysis?

22 DR. YUSUF: Would you repeat that question,  
23 please?

24 MR. DIGHE: Did you also take the Census 2000  
25 data which the staff took in your analysis of the racial

1 demographics?

2 DR. YUSUF: I used the 2000 Census --

3 MR. DIGHE: Thank you.

4 DR. YUSUF: -- data.

5 MR. DIGHE: Are you aware that Mountain House did  
6 not exist in year 2000?

7 DR. YUSUF: Yes, I'm aware of that.

8 MR. DIGHE: Thank you.

9 Are you aware that the people buying homes in  
10 Mountain House and coming -- are coming for good  
11 environmental and that's their main primary motivation?

12 DR. YUSUF: No, I'm not. I assume there are  
13 various reasons why people buy homes in certain areas.  
14 But that was not part of my analysis.

15 MR. DIGHE: Are you aware that is the only reason  
16 currently what Mountain House has to offer to the  
17 residents and the --

18 MR. WHEATLAND: I'm sorry I cut you off. Finish  
19 your question.

20 HEARING OFFICER CELLI: Did you want to finish  
21 your question before he objects?

22 MR. DIGHE: Yes.

23 Are you aware that Mountain House environmental  
24 is the only big -- actually one and only one environmental  
25 is the factor what drives the new home buyers in Mountain

1 House?

2 MR. WHEATLAND: I'll object to the question. It  
3 assumes facts not in evidence.

4 HEARING OFFICER CELLI: Sustained.

5 MR. DIGHE: Are you aware that Mountain House --  
6 and we just talked about it. I'm just going to repeat.  
7 Mountain House has no grocery stores. Mountain House has  
8 not high water bills. Mountain House has got high  
9 property taxes and Mountain House home values are much  
10 less than the surrounding Tracy neighborhood and  
11 environmental is the only big reason why people come to  
12 Mountain House and they have a particular mind-set?

13 HEARING OFFICER CELLI: If you know.

14 DR. YUSUF: No, I don't know that.

15 MR. DIGHE: Thank you.

16 Are you aware of the fact that Mountain House  
17 community has built up good schools and they have a  
18 particular mind-set for people and then they (inaudible)  
19 the community?

20 DR. YUSUF: No, I'm not.

21 MR. DIGHE: Thank you.

22 HEARING OFFICER CELLI: Any further questions,  
23 Mr. Dighe? I need you to say yes or no on the record.

24 MR. DIGHE: No.

25 HEARING OFFICER CELLI: Mr. Wilson, any cross of



1 these witnesses?

2 MR. WILSON: No cross. Thank you very much.

3 HEARING OFFICER CELLI: Thank you.

4 Mr. Singh, cross of these witnesses?

5 MR. SINGH: Yes.

6 HEARING OFFICER CELLI: Go ahead, please.

7 MR. SINGH: Have you done any analysis what type  
8 of jobs will be created and how many jobs will be created  
9 under each category?

10 DR. YUSUF: Yes. As part of my analysis for the  
11 AFC, I looked at the requirements for construction as well  
12 as operations of the project. I did evaluate that. Was  
13 there a second part of your question?

14 MR. SINGH: Can you explain to me what type of  
15 jobs will be created there?

16 DR. YUSUF: For the construction jobs, it would  
17 be typical construction jobs like carpenters and  
18 electricians and brick layers. So just masons. And then  
19 as far as the energy as well -- (inaudible) and  
20 maintenance technicians and that kind of job. Those kinds  
21 of jobs.

22 MR. SINGH: Do you know in Mountain House the  
23 population what type of their trade skills are?

24 DR. YUSUF: No, unfortunately I don't.

25 MR. SINGH: Do you agree these jobs will be

1 created to Alameda County?

2 DR. YUSUF: No, I do not agree with that.

3 MR. SINGH: So if you do not know what type of  
4 trade skills are available in Mountain House, then how you  
5 cannot agree with that?

6 DR. YUSUF: When we typically look at impacts to  
7 the labor market, we try to take up where potential  
8 workers might be coming from. And one of the things we  
9 looked at is the economic (inaudible) in that area. We  
10 don't look at individual communities or individual cities.  
11 But we look at how a larger area.

12 In this case, the three county region, because we  
13 start in that area, look three counties for development  
14 three counties as far as economics is concerned. So when  
15 we were evaluating job market, we evaluated job market for  
16 those two counties. We didn't specify where we get these  
17 three counties the job will be coming from.

18 MR. SINGH: Any percentage wise that you think  
19 like X percentage from Alameda, any percentage analysis  
20 you take that MEP can fetch that skill set around their  
21 various counties?

22 DR. YUSUF: We did evaluate the skill sets that  
23 are available and the skill sets that are projected to be  
24 available based on information we got from the California  
25 Employment Development Department. But we did not do that

1 for specific counties again because they were looking at  
2 the three county reach and that's the economic unit that's  
3 described where these impacts are likely to occur and the  
4 inter-dependency between various economic unit within  
5 these three counties. That's how we analyze it.

6 MR. SINGH: So basically according to your  
7 analysis, these jobs will not be offered to Mountain  
8 House?

9 DR. YUSUF: If there are people who have these  
10 skills in Mountain House, I don't see why they wouldn't  
11 necessarily have those jobs.

12 MR. SINGH: There are none.  
13 What type of material do you think will be bought  
14 and any type of analysis being done for the construction  
15 of this power plant and those materials will be bought.  
16 What type of these materials and what type of businesses  
17 that will create or increase in revenue?

18 DR. YUSUF: One example of material that will be  
19 bought would be cement and gravel, rock, gasoline, because  
20 it will be very far to get your gasoline. So there are a  
21 lot of things now.

22 As far as specific materials, that would be  
23 (inaudible) the power plant, that would be a question that  
24 (inaudible) wouldn't be able to answer that. But I have  
25 an understanding of some materials that will be bought.

1 MR. SINGH: Do you know most of the shops in  
2 Alameda County that provides gravel, cement?

3 DR. YUSUF: I'm not aware of that.

4 MR. SINGH: Have you done any analysis on that?

5 DR. YUSUF: No, I haven't done that.

6 MR. SINGH: Can you elaborate (inaudible) which  
7 key target for buying those materials?

8 MR. SARVEY: Excuse me. I can't hear.

9 HEARING OFFICER CELLI: Can we just have a  
10 second?

11 Mr. Lamb, come on in. Have a seat. What the  
12 chatter is -- Matt Dowell, if you're out there, I'd like  
13 you to come in and help me out. What we're hearing is our  
14 speaking going back around through the Web Ex and coming  
15 out of the podium. So I'm not sure if there is anything I  
16 can do about that room right now. We'll get a techy to  
17 come fix it.

18 So folks, yet more audio problems here in the  
19 Mariposa Energy Project hearings, I'm sorry to say. We'll  
20 try to get it fixed as soon as we can. But let's see if  
21 we can't hear past it. Let's do our best to focus in.

22 Mr. Singh, you have the last question.

23 MR. SINGH: Last question.

24 HEARING OFFICER CELLI: No. You asked the last  
25 question. Keep going if you have more questions.

1           MR. SINGH: So any two major vendors MEP Mariposa  
2 power plant has identified for where they will buy the raw  
3 material?

4           DR. YUSUF: I'm sorry. Can you repeat the  
5 question?

6           MR. SINGH: Any two major vendors where MEP has  
7 decided to buy their raw materials you're aware of?

8           HEARING OFFICER CELLI: He wants to know who the  
9 two major vendors would be for material for the MEP.

10          DR. YUSUF: I'm not here to stipulate to that.  
11 No, I don't.

12          HEARING OFFICER CELLI: She doesn't know.

13          MR. SINGH: Can I make a suggestion here?  
14 (inaudible)

15          HEARING OFFICER CELLI: Well, the problem is if I  
16 mute the thing that the sound is coming through -- here  
17 comes Mr. Dowell now -- then nobody will hear outside the  
18 building, because that's the very same source of the  
19 projection outside.

20          Do you hear this, Matt? We're going to go off  
21 the record for a minute.

22          (Off record.)

23          HEARING OFFICER CELLI: Sorry about the  
24 interruption, folks. We are trying to do our best to get  
25 good audio and make sure everybody can hear us. So we're

1 with Mr. Singh, cross-examination of the socio experts.

2 MR. SINGH: Are you aware that the same job  
3 creation (inaudible) why provided to Alameda County  
4 Supervisor Board of Directors?

5 DR. YUSUF: No, I'm not.

6 MR. SINGH: Have you done any recent demographics  
7 analysis of Mountain House?

8 DR. YUSUF: Could you tell me what you mean by  
9 "recent"?

10 MR. SINGH: Recent means last two years, three  
11 years.

12 DR. YUSUF: For the AFC, we looked at 2008 data  
13 for population. And that will include Mountain House at  
14 that point.

15 MR. SINGH: Okay. Are you aware of exhibit that  
16 I submitted Exhibit 803?

17 DR. YUSUF: Yes, I'm aware of that.

18 MR. SINGH: Do you agree to that demographics  
19 data provided by the New York Times?

20 DR. YUSUF: The demographic data that you are  
21 referring to I believe is the one from the American  
22 Communities Survey and that is a sample of the population.  
23 We typically do not use -- actually, we don't use -- not  
24 typically -- don't use American Community Survey data,  
25 because it's a sample. It's a sample of the median

1 households. So it's not going to capture the actual  
2 population characteristics.

3           What we are required to do by NEPA is to look at  
4 the Census data, because the Census data is actual count  
5 of people. So that is the more reliable data and that's  
6 the data that we use any time we are trying to say  
7 something about the population in general. And I  
8 understand from your exhibit that you were trying to  
9 figure out the presence of minority population within that  
10 area.

11           MR. SINGH: Do you know if that data was  
12 extracted based on the ZIP code, Exhibit 803?

13           DR. YUSUF: I understand that.

14           MR. SINGH: So what ZIP code did I use to extract  
15 that data?

16           DR. YUSUF: I will have to check that. Excuse  
17 me.

18           MR. WHEATLAND: Rather than for her to look it  
19 up, Mr. Singh, would you be able to tell us what ZIP code  
20 you used?

21           MR. SINGH: 95391, which is a Mountain House ZIP  
22 code.

23           DR. YUSUF: I'm sorry. Could you ask the  
24 question again?

25           HEARING OFFICER CELLI: There is no question

1 pending.

2 DR. YUSUF: Okay.

3 HEARING OFFICER CELLI: We're waiting for the  
4 next question.

5 MR. SINGH: You mentioned you use your own Census  
6 data. How often that Census data has been collected?

7 DR. YUSUF: Could you repeat that question,  
8 please?

9 MR. SINGH: You mention that you use your own  
10 Census data and how often that Census data is being done?

11 DR. YUSUF: Actually, I'm not using my own Census  
12 data, because I'm not the one who collected the data.  
13 It's the U.S. government who does that. And it's  
14 collected every ten years. So we just had one last year,  
15 but unfortunately the data is not out for us to use it at  
16 the moment.

17 MR. SINGH: If you have collected one data in  
18 2000, then what stops you to collect the data for 2010,  
19 which is almost ten years?

20 DR. YUSUF: I did not collect the 2000 data.  
21 That was collected by the U.S. government.

22 MR. SINGH: But did you make an effort to collect  
23 the data of 2010?

24 DR. YUSUF: Again, it's the U.S. government that  
25 collects that data. I don't personally go and collect



1 data.

2 MR. SINGH: Did you review that data?

3 DR. YUSUF: Did I review the 2010 data?

4 MR. SINGH: Yes.

5 DR. YUSUF: Yes, I did. But at this moment, the  
6 2010 data is not available at the Census (inaudible)  
7 level.

8 MR. SINGH: Then how did you get the data of 2008  
9 which you have elaborated in your previous statement?

10 DR. YUSUF: The 2008 data that I used is not  
11 for -- is not at the Census block level. It is the data  
12 that is available from the Department of Finance and  
13 that's done at the county level. County levels and  
14 city -- there are cities that we are considering.

15 MR. SINGH: So county and city level. Do you  
16 know what is the website you used to look at 2008 data?

17 DR. YUSUF: Yes, the Department of Finance for  
18 population.

19 MR. SINGH: Say it again.

20 DR. YUSUF: The Department of Finance.

21 MR. SINGH: Department of finance. Do you know  
22 their website, please?

23 DR. YUSUF: Should be I think [www.dof.ca.gov](http://www.dof.ca.gov).

24 MR. SINGH: Oh, good.

25 Do you know whether the voter registration data

1 is more accurate than any data being collected around the  
2 country?

3 DR. YUSUF: I'm not sure if -- it depends on what  
4 you want to use the data for. If you're collecting voter  
5 registration data, I assume it's because you want to know  
6 how many voters you have out there. But that only  
7 captures the people who can vote and people who are old  
8 enough to vote, unless I'm mistaken.

9 I don't claim to understand the voter  
10 registration data. It's not something that I use or that  
11 is required by the government methodologies that I use to  
12 do the socioeconomic analysis.

13 MR. SINGH: So according to U.S. Census data is a  
14 more accurate one, so why you have to spend time in 2008,  
15 Department of Finance records subject the data?

16 DR. YUSUF: The 2008 data was used for the  
17 socioeconomic analysis of the overall region that we are  
18 looking at. The 2000 U.S. Census data at the Census block  
19 level is the data we use the do the environmental justice  
20 analysis. So we don't do analysis for overall  
21 socioeconomic impacts to employment and housing and  
22 population. We don't do that at the level of a Census  
23 block. Because a Census block is not considered to be an  
24 economic unit.

25 MR. SINGH: So when you pick 2008 racial minority

1 data, so what was your input to collect that data? Was it  
2 on the ZIP code level or was it miles off radius or  
3 anything you can mention?

4 MR. WHEATLAND: Objection. The witness just  
5 explained that she did not use the 2008 data to calculate  
6 racial minority populations.

7 HEARING OFFICER CELLI: Overruled. She can  
8 answer the question.

9 DR. YUSUF: I did not use the 2008 data. I used  
10 the 2000 U.S. Census data for the environmental justice  
11 analysis.

12 MR. SINGH: Okay. Environmental. Did you  
13 contact -- or how many people you contacted in Mountain  
14 House to look into their feeling about the power plant and  
15 how it is going to impact?

16 DR. YUSUF: I did not personally contact anybody  
17 at Mountain House, but I do understand that there have  
18 been meetings at Mountain House, the Mountain House  
19 community was informed about the project couple of months  
20 before the project -- before the AFC was filed. And there  
21 have been several meetings since that time.

22 MR. SINGH: What was the mode of informing  
23 Mountain House community when AFC was filed?

24 DR. YUSUF: There were -- when it was filed or  
25 before it was filed?

1 MR. SINGH: Which date or year?

2 HEARING OFFICER CELLI: Mr. Singh, I'm not  
3 sure -- are you asking about the notice of the  
4 informational hearing?

5 MR. SINGH: Right.

6 HEARING OFFICER CELLI: That came from the Energy  
7 Commission. So this witness probably wouldn't have that.

8 MR. SINGH: Do you know like any analysis that  
9 you've done how housing prices are dropping in Mountain  
10 House?

11 DR. PRIESTLY: I am aware from testimony that we  
12 have heard from Mountain House residents that there has  
13 been a drop in property values in Mountain House that has  
14 mirrored the changes in the real estate market, both  
15 nationally and regionally.

16 MR. SINGH: Do you know how much percentage  
17 roughly it has dropped from the peak of the time?

18 DR. PRIESTLY: Well, I know from testimony given  
19 by members of the Mountain House community at least based  
20 on what I am hearing that many people bought their houses  
21 in the vicinity of maybe \$600,000 and the market value  
22 might be today in the 3- to \$400,000 range. Again, this  
23 is what I understand from testimony of your fellow  
24 residents.

25 HEARING OFFICER CELLI: Would that be comments at

1 the hearing?

2 DR. PRIESTLY: Yes. I'm sorry. Comment.

3 HEARING OFFICER CELLI: Thank you.

4 Mr. Singh, go ahead.

5 MR. SINGH: But you did not do your own analysis  
6 about how the property prices are dropping by going to  
7 Zillow or Trulia, all these reference sites?

8 DR. PRIESTLY: I'm going to have to ask you to  
9 rephrase the question. I'm not quite following it.

10 MR. SINGH: So you did not do your own analysis  
11 going to some of the popular websites like Zillow or  
12 Trulia which give the statistical analysis about how the  
13 housing prices impacted each areas?

14 HEARING OFFICER COTE: Yeah. For the particular  
15 issue that we're dealing with today, that really wasn't  
16 the relevant approach to take to the analysis.

17 HEARING OFFICER CELLI: Do you mind if I  
18 interject a question? What analysis did you do regarding  
19 the property values, if any?

20 DR. PRIESTLY: So some members of the Mountain  
21 House community have expressed considerable concern about  
22 the property value impact issue. In particular, as their  
23 primary piece of evidence to support these concerns, they  
24 have made reference to a paper by Lucas Davis and by now  
25 you've probably all seen my written testimony, which

1 included a very detailed analysis of the Davis paper. And  
2 a couple things we can say about it. One is --

3 HEARING OFFICER CELLI: I don't want to go in  
4 that direction. We've already gotten that testimony. Mr.  
5 Singh's question was what analysis did you do on the  
6 Mountain House property values, if any?

7 DR. PRIESTLY: For the purposes of evaluating the  
8 issue that we are dealing with today, it was not essential  
9 for us to do a detailed tracking of real estate values in  
10 Mountain House. So we took a different approach.

11 HEARING OFFICER CELLI: So the answer was none?

12 DR. PRIESTLY: In terms of the specifics of  
13 Mountain House values, no.

14 HEARING OFFICER CELLI: There you go.

15 Mr. Singh, did I get to it?

16 MR. SINGH: Yes.

17 DR. YUSUF: Can I add something?

18 HEARING OFFICER CELLI: Yes. Go ahead.

19 DR. YUSUF: As part of the socioeconomic  
20 analysis, we are expected to evaluate the impacts to the  
21 environment and the physical and the environment in  
22 general. And so when we are looking at housing impacts,  
23 we are looking at typical impacts to housing, not  
24 necessarily changes in the value of the (inaudible) or the  
25 houses or any other property. So we did document the

1 changes -- we will at least provide information about what  
2 the value of homes were at that time using website like  
3 data quick. But we did not evaluate until we were  
4 (inaudible) at the AFC anyway, we did not evaluate  
5 particular impacts to property values.

6 HEARING OFFICER CELLI: Thank you. I hope that's  
7 helpful, Mr. Singh.

8 MR. SINGH: Yes.

9 HEARING OFFICER CELLI: Go ahead.

10 MR. SINGH: So you mentioned that for racial  
11 minority the impacts that you considered is environmental  
12 and physical. Can you elaborate a little bit more  
13 physical Alameda what analysis you did as an impact on  
14 racial minorities?

15 DR. YUSUF: So typically when I look at  
16 environmental justice analysis, what I do is there are  
17 three different things that one has to do according to the  
18 methodology. The first one is to identify the presence of  
19 a minority or low income population, because that's what  
20 the environmental justice regulations call for.

21 And so what we do is we use the Census U.S.  
22 Census data, the Census block, which is the small of the  
23 unit, and we determine if there is a presence of a  
24 minority or a low income population. In the case of this  
25 project, we evaluated -- and this is a requirement by CSE,

1 a six mile radius. Within that six-mile radius, our data  
2 showed that there were 15 out of 112. A Census block said  
3 we included in the data that actually had minority  
4 populations that are above 50 percent. That the presence  
5 of a minority population and -- and there was no low  
6 income penalty of perjury I'm sorry to say. The presence  
7 of a minority population does not necessarily by itself  
8 indicate that there is an environmental justice issue.

9           The second part is then to find out from impact  
10 analysis done in either resource areas, so for instance,  
11 air quality impacts, water resources impacts, impacts that  
12 are likely to result in environmental or human health  
13 impacts to the community and once we talk to those  
14 professional analysts who give that analysis and to these  
15 conversations determine that there are or there are no  
16 impacts in this case there were no impacts remaining, no  
17 significant environmental impacts remaining after all  
18 project mitigations had been implemented, then we come to  
19 the conclusion that Mariposa does not constitute an  
20 environmental justice issue, according to the  
21 environmental justice guidelines and the analysis.

22           MR. SINGH: So there are no impacts since there  
23 is no environmental justice issue. So you do agree that  
24 within six-mile radius the population are racial  
25 minorities?



1 DR. YUSUF: We do agree there are Census blocks  
2 within the six-mile radius that have a percentage of  
3 minorities population that's over 50, yes.

4 MR. SINGH: And Mountain House is one of the  
5 Census block that you looked into?

6 DR. YUSUF: For 2000, it would have been in  
7 there, yes, the 2000 Census data we used.

8 MR. SINGH: So now, the question that I was  
9 asking was not environmental but a physical impact on the  
10 racial minorities, what was analysis being done for the  
11 physical impact? I understand you gave me lot of  
12 elaboration of water, air quality, health, and all that  
13 stuff. But I'm very much interested in physical analysis  
14 being done.

15 DR. YUSUF: The environmental justice impacts are  
16 far from analysis on environmental impacts. So we will  
17 look at physical changes, but we are not looking at  
18 impacts to an environmental justice community from these  
19 physical changes.

20 And my understanding from talking to my  
21 colleagues the analysis of the other sections of the AFC,  
22 there are no impacts that remain after mitigation measures  
23 have been implemented, no significant impacts. No  
24 environmental impacts, no physical impacts as far as I  
25 know as far as my analysis.

1           MR. SINGH: When you talk about the physical  
2 changes, what are those physical changes you look into?  
3 For example, the community not growing, the community  
4 grow. The community depleting and people moving out from  
5 those areas. Do you consider those as physical changes?

6           DR. YUSUF: Typically, physical changes would be  
7 changes that would affect -- maybe result in movement or  
8 the displacement of housing. So we would talk about maybe  
9 some homes have to be bought out or you would have a major  
10 highway coming through a neighborhood. That would be a  
11 physical change. But from what we are looking at for this  
12 project for Mariposa, the community, my understanding is  
13 2.3 miles away from the project. So from a physical point  
14 of view, Mariposa is not going to be affecting the  
15 Mountain House community.

16           HEARING OFFICER CELLI: Ms. Yusuf, can I just  
17 ask, because his question was is a community not growing  
18 or people moving out considered a physical change that you  
19 would analyze?

20           DR. YUSUF: A community not growing, no, it's not  
21 part of the requirements of CEQA for us to analyze that.

22           HEARING OFFICER CELLI: Thank you. Go ahead, Mr.  
23 Singh.

24           MR. SINGH: So just now you make the statement  
25 that displacement of the community, people moving out is a

1 part of physical change.

2 HEARING OFFICER CELLI: Is not I thought she  
3 said.

4 MR. SINGH: "Is". She mentioned "is".

5 Any way of --

6 HEARING OFFICER CELLI: See what the transcript  
7 says.

8 MR. SINGH: Did you do any analysis in last five  
9 year how the Mountain House is growing or last ten years  
10 how the Mountain House is growing, what is the rate of  
11 growth? What is the rate of depletion of sustained --  
12 those type of analysis have you done on Mountain House?

13 DR. YUSUF: No. My analysis did not specifically  
14 target or look at Mountain House.

15 MR. SINGH: Do you know Mountain House is  
16 considered as a low income group minority also?

17 DR. YUSUF: Can you tell me what data that you  
18 used to come up with that?

19 MR. SINGH: Did you do the type of analysis that  
20 Mountain House is a low income community or within the six  
21 miles of radius what are those pockets which are low  
22 income community?

23 DR. YUSUF: So our analysis which was based on  
24 the 2000 Census did not show any pockets or any Census  
25 blocks that were low income.

1 MR. SINGH: What is the limit for the low income?

2 DR. YUSUF: Low income would be the number of  
3 people -- I think it's a family of four. I have to check  
4 my documentation. It would be a family of four making  
5 less than some certain poverty level income that's been  
6 set by the government.

7 MR. SINGH: But you are an expert on this, right?

8 DR. YUSUF: I'm an expert on environmental  
9 justice and an expert on using the data that the U.S.  
10 government puts out. But I'm not an expert on determining  
11 what level of income is considered to be below the poverty  
12 level.

13 MR. SINGH: But have you discussed about  
14 (inaudible) at any point what is the low income for racial  
15 minorities considered for environmental justice?

16 DR. YUSUF: Low income does not just look at  
17 racial minorities. Low income is across the board all the  
18 population. And there is a set guidelines and it depends  
19 on the region you're looking at and depends on the area  
20 you're looking at what the level is going to be. It's  
21 something I would have to look up.

22 MR. SINGH: Were there any additional efforts  
23 being put to get a U.S. government consensus data to  
24 establish -- you have already established racial minority.  
25 So our town is racial minority, right?

1 DR. YUSUF: Could you repeat that question,  
2 please?

3 HEARING OFFICER CELLI: Is Mountain House a  
4 racial minority community?

5 DR. YUSUF: I wouldn't be able to say that with  
6 all certainty, because we don't have the 2010 Census data  
7 out. And my understanding is Mountain House did not exist  
8 in the 2000 Census. So I couldn't stipulate to that.

9 MR. SINGH: What are any additional effort being  
10 made if the data are not available from U.S. government  
11 for establishing a racial minority? Was there any other  
12 data source that was looked into to establish whether six  
13 miles of radius is a racial minority or not?

14 DR. YUSUF: We are kind of -- I mean, we are  
15 required to use the guidance and the guidance clearly  
16 state -- and this is guidance by the counsel on  
17 environmental quality. They put out a guidance back in  
18 1997 on what to use to provide guidance to people who are  
19 going to be environmental justice analysis. And the  
20 guidance clearly states that we have to use U.S. Census  
21 data.

22 MR. SINGH: But let's say the U.S. Census data is  
23 not available. Do you have to wait for another ten years  
24 or do they also say, okay, well, if you don't get the data  
25 within ten years, then you use another source?

1 DR. YUSUF: There are no other sources that  
2 actually counts people and get the racial ethnic identity.  
3 There is no other data set out there that does that. We  
4 do this every ten years. U.S. Government does this every  
5 ten years. There is no other data source or any other  
6 agency that has that.

7 MR. SINGH: So that means that's a very sweet  
8 spot to start any power plant to -- that racial minority  
9 will never come during that period. And it is perfect  
10 timing for Mariposa plant to start in 2000 and then in  
11 2010 no data will be available and they will get a go  
12 ahead and MEP. Did you do that analysis that it was  
13 basically -- whatever, you know, the timing selected and  
14 all that?

15 MR. WHEATLAND: Objection. Argumentative.

16 HEARING OFFICER CELLI: Sustained.

17 MR. SINGH: So thank you very much. This is what  
18 I have.

19 HEARING OFFICER CELLI: Thank you, Mr. Singh.

20 Mr. Carlton and Mr. Mainland, I don't know how  
21 you want to proceed, who goes first. Mr. Carlton is going  
22 to need Mr. Singh's mike. Mr. Mainland is going to need  
23 Mr. Simpson's microphone. And in order to speak, that red  
24 ring has to be on.

25 MR. CARLTON: Excuse me. I just have a couple of

1 questions. To do the environmental justice, you used the  
2 2000 Census data; is that right?

3 DR. YUSUF: Yes.

4 MR. CARLTON: Mountain House did not exist in  
5 2000; is that correct?

6 DR. YUSUF: Yes.

7 MR. CARLTON: So how is the 2000 Census data  
8 relevant to your studies?

9 DR. YUSUF: Well, the 2000 Census data was the  
10 most recent data that we have available. And we are  
11 required to do an environmental justice analysis.  
12 Furthermore, even if we were to assume for today's  
13 purposes that Mountain House is a minority community,  
14 we've already indicated that there are 15 Census blocks  
15 within the six mile radius that already have a high enough  
16 minority population. So over 50 percent. But that's not  
17 the end of the story with environmental justice. It's not  
18 just identifying --

19 MR. CARLTON: She answered the question.

20 MR. WHEATLAND: She haven't asked your question.  
21 You asked about relevance.

22 DR. YUSUF: So even if we were to have -- even if  
23 it was all 112 of the Census blocks within the six-mile  
24 radius were 50 percent or no minority, it still would not  
25 make any difference to my analysis, because my analysis

1 indicates that all environmental impacts are healthy  
2 mitigated to below significance level, all of them. So  
3 that's the mitigation -- once mitigation measures I place  
4 all environmental (inaudible) to be below significance  
5 level, in which case then there is -- there's no  
6 environmental justice in fact issue.

7 MR. CARLTON: That's all my questions.

8 HEARING OFFICER CELLI: Thank you, Mr. Carlton.

9 And am I on to Rob Simpson? And then I'm going  
10 to need you, Mr. Carlton, to turn off that mike so Mr.  
11 Simpson's will work. Go ahead, Mr. Simpson.

12 MR. SIMPSON: Good morning, thank you.

13 Just to pick up on where you left off there,  
14 under that scenario of well if there is no impact, then it  
15 doesn't really matter if there is minority communities.  
16 Does that mean you can just skip the first step and go  
17 straight to the project has no impacts so we don't need to  
18 do an analysis of if there is minority communities here or  
19 not?

20 DR. YUSUF: No. But the steps are you have to  
21 identify if there are environmental justice community. So  
22 we did that. And then I wait on all my other colleagues  
23 who do the other environmental assessments for the  
24 project. And based on their input, you know, depending  
25 what they tell me there are no impacts. If there are no



1 impacts, there are no impacts for us to worry about in  
2 terms of environmental justice.

3 MR. SIMPSON: But then why don't you wait until  
4 after they do theirs to do yours. You don't even have to  
5 take that step if they say there's no impacts.

6 DR. YUSUF: The regulations ask us to do it that  
7 way.

8 MR. SIMPSON: Why?

9 DR. YUSUF: We are required to identify.

10 MR. SIMPSON: Why?

11 DR. YUSUF: It's just a regulation.

12 MR. SIMPSON: Is there a chance that an  
13 environmental justice community would have different  
14 stressors or different level of impact from the same  
15 source?

16 DR. YUSUF: I wouldn't know. I'm sorry.

17 MR. SIMPSON: Well, if you found a rational  
18 for -- it sounds like you found a rational there is no  
19 need for the first step if the second step says there is  
20 no impact on anyone.

21 DR. YUSUF: Even if we know going in there aren't  
22 going to be any impacts for implementing any kinds of  
23 mitigation measures, even if we knew that, the regulations  
24 are we have to do an environmental justice analysis. So  
25 we have to do the first step. We have to identify the

1 presence of that. So we can't skip the first step.

2 MR. SIMPSON: And you don't have any idea what  
3 the basis for that is?

4 DR. YUSUF: It could be a long process. It's my  
5 understanding for doing environmental justice for a number  
6 of years now is this issue came about back in the 90s and  
7 maybe 80s when there are a lot of highways that were built  
8 going through predominantly minority communities and there  
9 was a feeling that minorities would be impacted by these  
10 projects. So without -- I think (inaudible) but I  
11 couldn't tell you for sure what the rationale was for  
12 establishing the guidelines how we are supposed to go  
13 about doing the environmental justice analysis.

14 MR. SIMPSON: I see. So if a household has an  
15 income of \$100,000, could it be a low income household?

16 DR. YUSUF: I don't think so.

17 MR. SIMPSON: Thank you. Is water a public  
18 service?

19 DR. YUSUF: Yeah, water is a public service.

20 MR. SIMPSON: How much water will the facility  
21 use?

22 DR. YUSUF: I would --

23 HEARING OFFICER CELLI: If you know.

24 DR. YUSUF: No, I don't know.

25 MR. SIMPSON: All my questions will be if you

1 know.

2 DR. YUSUF: Okay.

3 MR. SIMPSON: Your answer was you didn't know?

4 DR. YUSUF: I don't know.

5 MR. SIMPSON: Is there a significant level for  
6 use of water that would be a negative effect on a public  
7 service?

8 DR. YUSUF: If it's determined, yes. But I  
9 didn't get that information. I mean, the water resource  
10 section of this told me there were no significant impacts.

11 MR. SIMPSON: I see. So you don't have your own  
12 free-standing threshold of this much water would be an  
13 impacts?

14 DR. YUSUF: No. I rely on experts in that field.

15 MR. SIMPSON: I see. Have you ever found a power  
16 plant to effect an environmental justice community?

17 MR. WHEATLAND: Objection. Relevance.

18 HEARING OFFICER CELLI: What wa the relevance?

19 MR. SIMPSON: Well, we've got this one-way ticket  
20 to an exit for this environmental justice consideration  
21 that if we're saying that we don't license the power plant  
22 that has an impact, then there is no reason for an  
23 environmental justice analysis under this scenario. So if  
24 the conclusion is always that well, we mitigate every  
25 thing, then it swindles number two out of the steps of the

1 environmental justice process.

2 HEARING OFFICER CELLI: Okay. Let's step back a  
3 second. Your question was have you ever found any -- your  
4 question was has she ever analyzed any power plant and  
5 found that there was an environmental justice impact to  
6 environmental justice. I don't want to put words in your  
7 mouth, but it was something to that effect. And the  
8 objection is relevance. What is her experience of  
9 giving -- of making that finding in the past. And so I  
10 think that's what you need to address.

11 MR. SIMPSON: What I'm trying to understand is --

12 HEARING OFFICER CELLI: Actually, let's put it  
13 this way. The objection is sustained. I think you can  
14 get to what you're getting to by asking it a different  
15 way.

16 MR. SIMPSON: Okay. Are you aware of any power  
17 plants that have been determined to have an environmental  
18 justice negative impact?

19 DR. YUSUF: Off the top of my head, right now,  
20 no.

21 MR. SIMPSON: I see. Can the power plant effect  
22 property values?

23 DR. PRIESTLY: Could you repeat your question?

24 MR. SIMPSON: Sure. Can a power plant effect  
25 property values?

1 DR. PRIESTLY: Theoretically, possibly, it could.

2 MR. SIMPSON: In what way?

3 DR. PRIESTLY: Well, okay. If you look at the  
4 Davis paper, he identifies five ways for which a power  
5 plant might be assumed to have some impact on property  
6 values. One would be if there were original impact or in  
7 the case of Mountain House community, there will be  
8 virtually no additional impact on the community. Another  
9 would be noise impacts. And the analyses for the Mountain  
10 House or the MEP rather indicate the project will have no  
11 noise impacts on Mountain House.

12 The third area might be localized air quality  
13 effects. And again, the staff assessment indicates that  
14 the MEP will have no localized air quality impacts on the  
15 Mountain House community.

16 Other area might be traffic impacts during the  
17 operational period. So, for example, if you have a coal  
18 fire plant, there would be like noisy cranes or fire  
19 engines or even trucks bringing loads of coal into the  
20 power plant. Again, in the case of the MEP since it's gas  
21 fired, there is no traffic impact during operation.

22 And the final thing that Davis identifies would  
23 be (inaudible) ash and the like. But again in the case of  
24 the MEP since it's the gas fired power plants, we don't  
25 have these kinds of residual. So although there might be

1 some circumstances, particularly where an old fashioned  
2 coal power plant might have property value impacts on  
3 properties very, very close to it, that would not be the  
4 case with the MEP. It's a different kind -- different  
5 type of power plants with very, very low impact and no  
6 impacts that would directly impact the Mountain House  
7 community.

8 HEARING OFFICER CELLI: Before you ask your next  
9 question, Mr. Simpson, can someone tell me whether the  
10 Davis paper is in evidence, what exhibit number the Davis  
11 paper is? Is that your evidence, Mr. Dighe?

12 MR. WHEATLAND: Although, if the Davis paper is  
13 moved into evidence, we would object to its admission,  
14 since there is no one available to sponsor it, that  
15 testimony as to its truth or accuracy.

16 HEARING OFFICER CELLI: I just want to refer to  
17 it as the exhibit number it's been identified as up until  
18 now.

19 MR. DIGHE: 609.

20 HEARING OFFICER CELLI: So the Davis paper is  
21 Exhibit 609. If in the future we can refer to it as  
22 Exhibit 609, it would make things easier for us.

23 MR. DIGHE: Just a clarification. So it's a part  
24 of 609.

25 HEARING OFFICER CELLI: Right.

1 MR. SIMPSON: So it is on the record?

2 HEARING OFFICER CELLI: Well, it's been marked  
3 for identification. I haven't received any of Mr. Dighe's  
4 exhibits yet. But we'll do it at the close of this. I  
5 have your

6 MR. DENNIS: Thank you. By the way, I also have  
7 the video cued up.

8 MR. DIGHE: That has a nice version of the video.  
9 (inaudible) and I believe last time you said there was a  
10 flicker.

11 HEARING OFFICER CELLI: Right. I have it. And  
12 we'll play it in a little bit.

13 I'm sorry, Mr. Simpson, I interrupted. Go ahead.

14 MR. SIMPSON: No problem. Thank you.

15 You were answering about property values. But  
16 you got more specific to the Mountain House community and  
17 residential property values. Is there an opportunity  
18 adjacent to the site to build a home or homes?

19 DR. PRIESTLY: I'm sorry. I didn't quite catch  
20 the question.

21 MR. SIMPSON: Your last response was directed  
22 more towards property value effects in the Mountain House  
23 city, town? What do we call that? But what about  
24 property values immediately adjacent to the facility?

25 HEARING OFFICER CELLI: Before you answer that, I

1 just want to say that what he said was community services  
2 district, for the record. Go ahead.

3 MR. SIMPSON: Thank you.

4 DR. PRIESTLY: You'd have to take a very, very  
5 close look at the residents in proximity to the project.  
6 Now, something you also have to keep in mind is the  
7 context of that area in that there is already a power  
8 plant adjacent to the -- adjacent to the site. And  
9 interestingly, that particular area is just filled with  
10 major infrastructure facilities of statewide important  
11 to -- we have the major gas pump in plant, gas pipeline,  
12 500 KB transmission lines, major water pumping and can all  
13 facilities and also major wind park.

14 So the area in the immediate vicinity of the  
15 power plant to the extent there are residents there, these  
16 residents already exist in an area that has -- you might  
17 call it like an infrastructure character.

18 MR. SIMPSON: I'm not sure that -- I appreciate  
19 your words, but I'm not sure you responded to the  
20 question. Can this project have an effect on adjacent  
21 property values?

22 DR. PRIESTLY: What do you mean by adjacent?

23 MR. SIMPSON: Within a mile of the facility.

24 MR. WHEATLAND: I object. I believe the witness  
25 can answer the question.



1 HEARING OFFICER CELLI: I'm sorry. I missed it.

2 What was the question?

3 MR. SIMPSON: If the project may have an effect  
4 on property values within a mile of the facility.

5 HEARING OFFICER CELLI: And the objection is?

6 MR. WHEATLAND: The objection was asked and  
7 answered. The witness stated that this is an area that  
8 would have to be examined and you have to consider the  
9 general infrastructure in the area.

10 HEARING OFFICER CELLI: Which isn't necessarily  
11 responsive to that question. So I'll allow the question.  
12 Go ahead.

13 DR. PRIESTLY: So if that case, again, you would  
14 have to take a very specific look at the properties.  
15 There are physical relationship to the power plant, and  
16 whether or not there would be views to the extent to the  
17 which the present power plant would change views. And as  
18 I indicated because of the infrastructure nature of the  
19 landscape in immediate vicinity of the power plants, if  
20 you were a resident within a mile of the power plant or  
21 emitting anything in your environment already that has an  
22 infrastructure character and the presents of the power  
23 plant there but not really substantially change your view.

24 And then again, the analysis in the staff  
25 assessment indicated there would not be localized noise

1 impacts, air quality impacts, transportation impacts, so  
2 on. So if you look at some of the factors that have been  
3 set out as being a cause of property value impacts  
4 probably it looks like you would not (inaudible) within a  
5 mile of the power plant.

6 MR. SIMPSON: I see. You mentioned NEPA. Is  
7 this project subject to NEPA?

8 DR. YUSUF: It's subject to CEQA.

9 MR. SIMPSON: I understand.

10 DR. YUSUF: And there are elements of the  
11 analysis that we did when the CEC allows us to use NEPA  
12 guidance because the CEQA guidance differs to the NEPA  
13 guidance.

14 MR. SIMPSON: Maybe I didn't understand. Was  
15 that a yes, it's subject to NEPA or no it's not.

16 DR. YUSUF: It's not subject to NEPA. But we use  
17 NEPA guidance, because the CEQA differs to NEPA for some  
18 of the guidance for environmental justice analysis.

19 MR. SIMPSON: Thank you.

20 The infrastructure in the area that you  
21 referenced, can that support growth?

22 DR. PRIESTLY: The infrastructure that I was  
23 referring to is actually infrastructure of statewide  
24 significance that serves statewide and regional  
25 infrastructure needs. So for example, gas pumping plants,

1 transmission lines and so on. That particular  
2 infrastructure is not oriented towards necessarily  
3 promoting or not promoting localized growth.

4 MR. SIMPSON: Okay. If we didn't have adequate  
5 electricity in a community, would it be likely to grow?

6 MR. WHEATLAND: Objection. That goes beyond the  
7 scope of these witness's testimony.

8 HEARING OFFICER CELLI: If there's --

9 MR. WHEATLAND: He's asking about the growth  
10 inducing aspects of this project, which was the subject we  
11 covered when we dealt with land use.

12 HEARING OFFICER CELLI: Does staff talk about  
13 growth inducing impacts in socio? The answer is no,  
14 because your mike isn't on. That's why I'm saying that.  
15 Sustained. Next question. Go ahead.

16 MR. SIMPSON: I see.

17 Do you believe that the project can induce  
18 substantial population growth in a new area, either  
19 directly or indirectly?

20 MR. WHEATLAND: Objection.

21 HEARING OFFICER CELLI: Overruled. If they know.

22 DR. YUSUF: Could you repeat that question,  
23 please?

24 MR. SIMPSON: Can this project induce substantial  
25 population growth in a new area either directly or

1 indirectly?

2 DR. YUSUF: We do not believe so.

3 MR. SIMPSON: Do you believe that in anybody  
4 wanted to build a winery, they could build it next to the  
5 plants or somewhere else if they this a choice?

6 MR. WHEATLAND: Objection. Assumes facts not in  
7 evidence and calls for speculation.

8 HEARING OFFICER CELLI: And it also -- sustained.

9 MR. SIMPSON: Are there recreational facilities  
10 within the impact zone of this facility?

11 DR. YUSUF: I do believe staff did look at that.

12 MR. SIMPSON: Are you aware of any recreational  
13 facilities within the impacts area of this project?

14 DR. YUSUF: I understand that there are  
15 recreational areas closeby.

16 MR. SIMPSON: I see. And --

17 HEARING OFFICER CELLI: When you say impact zone,  
18 do you mean that six-mile radius?

19 MR. SIMPSON: Not necessarily.

20 Did you study the air quality impacts on the  
21 recreational facilities to determine if there would be  
22 physical deterioration on recreational facilities from the  
23 project?

24 MR. WHEATLAND: Did you mean did she personally  
25 or did the applicant?

1 HEARING OFFICER CELLI: He's trying to clear up  
2 the vagueness of your question.

3 MR. SIMPSON: I'm sorry. I didn't really want to  
4 cross talk to people.

5 HEARING OFFICER CELLI: I'm taking that as an  
6 objection of vagueness. So if you can clear that up, be  
7 specific.

8 MR. SIMPSON: For purposes of your socioeconomic  
9 evaluation, did you study the air quality impacts on the  
10 recreational facilities?

11 DR. YUSUF: No, I did not.

12 MR. SIMPSON: Thank you.

13 Will this project increase or decrease the price  
14 of electricity in the adjacent communities?

15 MR. WHEATLAND: Objection. Goes the beyond the  
16 scope of these witnesses' testimony.

17 HEARING OFFICER CELLI: Sustained.

18 MR. SIMPSON: Could cheaper electricity induce  
19 growth in the area?

20 MR. WHEATLAND: Objection. Goes beyond the scope  
21 of these witnesses' testimony.

22 HEARING OFFICER CELLI: I'm not sure about that.  
23 I think they can answer that question.

24 MR. WHEATLAND: If I could just add, they're not  
25 testifying to the growth inducing aspects of this project.

1 They're talking about the socioeconomic impacts of this  
2 project on the finances and socioeconomic factors.  
3 They're not talking about growth.

4 HEARING OFFICER CELLI: Well, isn't part of socio  
5 impacts people moving into the area?

6 MR. WHEATLAND: In terms of the impacts on the  
7 people living in the area. But the growth inducing  
8 impacts is not within the scope of their testimony.

9 MR. SIMPSON: It is within staff's.

10 MR. WHEATLAND: It's not within theirs.

11 MR. SIMPSON: And within CEQA.

12 HEARING OFFICER CELLI: Let's ask staff when you  
13 get to that. We haven't heard from staff's socioeconomics  
14 people yet. Am I right about that? I don't think we took  
15 this out of order. We haven't heard from staff. Hold  
16 that question now for staff and we'll let them answer.

17 MR. SIMPSON: So the objection is --

18 HEARING OFFICER CELLI: Sustained.

19 MR. SIMPSON: Sustains. On the basis of?

20 HEARING OFFICER CELLI: Lack of expertise. Lacks  
21 foundation actually.

22 MR. SIMPSON: Oh, okay. Maybe I can fix that  
23 then.

24 Within CEQA socioeconomic study would look at  
25 what a project induces substantial population growth; is

1 that correct?

2 DR. YUSUF: Yes. So we would look at changes to  
3 the population because of the project.

4 MR. SIMPSON: I see. And have you studied  
5 whether cheaper electricity would induce growth?

6 DR. YUSUF: That's not in my area of expertise.

7 MR. SIMPSON: Thank you. That's enough for me.

8 HEARING OFFICER CELLI: Thank you, sir.

9 Next we have staff. Any cross-examination?  
10 Please turn on your mike.

11 STAFF COUNSEL WILLIS: Staff does not have any  
12 questions.

13 HEARING OFFICER CELLI: Thank you.

14 Just as a housekeeping, you're going to need to  
15 keep that within about six inches of you in order to be  
16 heard.

17 Any redirect by the applicant?

18 MR. WHEATLAND: No.

19 HEARING OFFICER CELLI: Thank you. These  
20 witnesses are excused.

21 At this time, we -- that was Mr. Sarvey. Do you  
22 have any evidence to put on with regard to socioeconomics?

23 MR. WHEATLAND: As I understood last -- in our  
24 last hearings when I moved an exhibit into evidence, we  
25 moved all of the exhibit into evidence at that time.

1 HEARING OFFICER CELLI: All of your socio is?

2 MR. WHEATLAND: Right. So all of our exhibits  
3 are in for socio.

4 HEARING OFFICER CELLI: Thank you. I guess at  
5 this time we'll call staff's panel.

6 MR. SARVEY: Mr. Celli, I was answering your  
7 question. That was intervenor Mountain House's paper and  
8 they would like to enter it into the record. But Mr. Lamb  
9 wasn't here when his opportunity arised.

10 HEARING OFFICER CELLI: All right. So I am  
11 holding a document called Quarterly Mountain House Sale  
12 Summary. It's a single sheet. It's a table. And it has  
13 a diagram showing total decreases in value. This is being  
14 offered by Mr. Dighe -- no. This is being offered by  
15 Mountain House Community Services District.

16 MR. LAMB: Can I speak to it?

17 HEARING OFFICER CELLI: Well, only -- here's my  
18 big question. Have you shown this to everyone and asked  
19 whether they are will be to stipulate it into the record?

20 MR. LAMB: I sent it to everybody, including the  
21 Commission, the applicant, and all of the intervenors on  
22 the mailing list two weeks -- when we had our last hearing  
23 the second day, the second morning. And the reason I  
24 created this was in light of the testimony from Mountain  
25 House residents. We had a whole parade of people that got



1 up there and testified to the fact that their property  
2 values had gone down. They weren't testifying to the  
3 impact, just that they already suffered quite a bit. I  
4 thought it would be good to provide some context to that.

5           So really this is just to give clarity to the  
6 voice of the residents who came forward and said our  
7 property values have dropped. And I just wanted to put a  
8 number to that. This is strictly data called from the  
9 local MLS. It's everything that was sold that was  
10 registered. So there's no parsing or playing with these  
11 numbers. And all it's showing is the percentage drop from  
12 the peak to the end.

13           And what I sent you has all of the supporting  
14 reports that supports each of these line items. So it  
15 showed every single thing that was sold. I think it has  
16 relevance to the Commission just to testify their  
17 assertion to we've had a huge loss in property values.  
18 I'm not -- you can give whatever weight you want to it.  
19 But I'd like to see this entered as an item.

20           And again, everybody has copies of it  
21 electronically, including yourself.

22           HEARING OFFICER CELLI: Okay. Let me just say  
23 generally the Commission -- the Commission I'm sorry --  
24 the Committee has already received all of the evidence  
25 that we want to at the prehearing conference. The

1 pre-marked things will come up from time to time and we  
2 may have to bring in some re filed documents. But in this  
3 case --

4 MR. LAMB: The reason I brought it forward, it  
5 was in the context of all of the testimony from Mountain  
6 House residents. And they were vague. They consistently  
7 said we have a huge amounts of property value loss. I'm  
8 just trying to iron out what that means.

9 HEARING OFFICER CELLI: I see it's helpful. It's  
10 useful information. It would be marked for identification  
11 as Exhibit 500, which would be the first exhibit from  
12 Mountain House. But I would say that we're not inclined  
13 to receive it into evidence unless all of the parties  
14 are -- would be okay with our receiving it. So any  
15 objection to receiving it from applicant?

16 MR. WHEATLAND: Well, I note there is nothing on  
17 this page to explain the basis of it. But I think it is  
18 helpful in showing since this application was filed in  
19 June of 2009 the property values have either remained the  
20 same or gone up. And for that purpose, we have no  
21 objection to its admission.

22 HEARING OFFICER CELLI: Does anyone who's here  
23 right now have an objection? Do you object to this  
24 document, Mr. Dighe?

25 MR. DIGHE: No objection.

1 HEARING OFFICER CELLI: Mr. Wilson?

2 MR. WILSON: No objection.

3 HEARING OFFICER CELLI: Mr. Singh? Any objection  
4 to this document coming in showing a 57.09 percent  
5 decrease in property value of Mountain House?

6 MR. SINGH: I would say this is taken into  
7 consideration how Mountain House is suffering.

8 HEARING OFFICER CELLI: I'm not sure how we're  
9 going to use it. But I just want to know whether you  
10 object to its receipt into evidence.

11 MR. SINGH: No objection.

12 HEARING OFFICER CELLI: Sierra Club?

13 MR. CARLTON: No objection.

14 HEARING OFFICER CELLI: Mr. Simpson?

15 MR. SIMPSON: No objection.

16 HEARING OFFICER CELLI: Mr. Sarvey?

17 MR. SARVEY: None.

18 HEARING OFFICER CELLI: Staff?

19 STAFF COUNSEL WILLIS: We don't actually have a  
20 copy of that. So we're going to need to get a copy of it  
21 before we --

22 MR. LAMB: I sent a copy to -- you have all the  
23 supporting reports that supports each line item in e-mail  
24 form two weeks ago.

25 HEARING OFFICER CELLI: For the record, Exhibit

1 500 is quarterly Mountain House Sales Summary from  
2 10-1-2005 to 10-1-2010 showing from to average sales  
3 price, average price per square foot, percentage drop,  
4 numbers sold, total decrease in value, 57.09 percent with  
5 a pictorial graphic showing a graph line going down from  
6 as high as \$700,000 to as low as \$300,000 between December  
7 of '05 and June of 2010. And it says on the bottom all  
8 homes sold reported to the metro list MLS, which is  
9 multiple listing service.

10 So the question is is there any objection by  
11 staff to the receipt of Exhibit 500?

12 STAFF COUNSEL WILLIS: No.

13 HEARING OFFICER CELLI: No objection? Okay.  
14 Exhibit 500 is received.

15 (Whereupon the above-referenced document was  
16 marked for identification and received  
17 into evidence by the Hearing Officer.)

18 HEARING OFFICER CELLI: At this time -- do you  
19 have a panel?

20 STAFF COUNSEL WILLIS: Yes.

21 HEARING OFFICER CELLI: Let's get your panel  
22 sworn, Mr. Petty.

23 (Whereupon the witnesses were sworn.)

24 MR. PETTY: Please state and spell your names for  
25 the record.

1 MS. FORD: Kristen Ford. K-r-i-s-t-e-n, F-o-r-d.

2 MR. HOFFMAN: Craig Hoffman, last name,  
3 H-o-f-f-m-a-n.

4 MS. STENNICK: Amanda Stennick, A-m-a-n-d-a,  
5 S-t-e-n-n-i-c-k.

6 HEARING OFFICER CELLI: Go ahead. Direct by  
7 staff.

8 DIRECT EXAMINATION

9 STAFF COUNSEL WILLIS: First let's start with Ms.  
10 Ford. Was the statement of your qualification attached to  
11 your testimony?

12 MS. FORD: Yes.

13 STAFF COUNSEL WILLIS: Did you prepare the  
14 testimony entitled "Socioeconomics and Supplemental Staff  
15 Assessment" that was marked Exhibit 301?

16 MS. FORD: Yes.

17 STAFF COUNSEL WILLIS: Do you have any changes to  
18 your written testimony that you're proposing today?

19 MS. FORD: No, I do not.

20 STAFF COUNSEL WILLIS: Do the opinions contained  
21 in your testimony represents your best professional  
22 judgment?

23 MS. FORD: Yes.

24 STAFF COUNSEL WILLIS: Just briefly, what do you  
25 look for in conducting a socioeconomic analysis?

1 MS. FORD: I analyze development of a proposed  
2 power plant that significantly impacts schools, law  
3 enforcement, parks, housing public services, and jobs.

4 STAFF COUNSEL WILLIS: Did you conclude if there  
5 would be any adverse socioeconomic project impacts?

6 MS. FORD: My analysis did not find adverse  
7 socioeconomic project impacts.

8 STAFF COUNSEL WILLIS: Thank you.

9 Now, Ms. Stennick, is the statement of your  
10 qualifications provided?

11 MS. STENNICK: It was attached to staff's brief  
12 filed on February 17th. It was attached to staff's brief  
13 filed on February 17th.

14 STAFF COUNSEL WILLIS: Thank you. And did you  
15 supervise the testimony entitled socioeconomic and  
16 supplemental staff assessment?

17 MS. STENNICK: Yes, I did.

18 STAFF COUNSEL WILLIS: Okay. Mr. Hoffman, what  
19 is your position at the California Energy Commission?

20 MR. HOFFMAN: I'm a Project Manager within the  
21 Compliance and Siting Division.

22 STAFF COUNSEL WILLIS: Was the statement of your  
23 qualifications attached to the supplemental staff  
24 assessment?

25 MR. HOFFMAN: Yes, it was.

1           STAFF COUNSEL WILLIS: Now, Ms. Ford, could you  
2 please briefly describe how you do your demographic  
3 screening?

4           MS. FORD: First I reviewed the demographic data  
5 represented in Figure 1 in the socioeconomic, which was  
6 from the best available data the 2000 U.S. Census. I also  
7 reviewed the Mountain House Community Service District  
8 survey data and that's on page 4.8, two and three. And  
9 the demographic screening encompasses a six-mile radius  
10 around the project site. This is the (inaudible) been an  
11 area of potential impact for all the Energy Commission  
12 site cases.

13           STAFF COUNSEL WILLIS: Thank you.

14           Mr. Hoffman, did you address the issue of  
15 environmental justice in your analysis?

16           MR. HOFFMAN: Yes, I did. Within the executive  
17 summary beginning on pages 1-5 through 1-7.

18           STAFF COUNSEL WILLIS: And what is the purpose of  
19 doing an environmental justice analysis?

20           MR. HOFFMAN: The purpose is to ensure there are  
21 no adverse impacts to low income or minority communities  
22 and to ensure that the community has sufficient  
23 information through outreach efforts.

24           STAFF COUNSEL WILLIS: And what are the  
25 components of an environmental justice analysis?

1           MR. HOFFMAN: The components include outreach  
2 involvement on screening level analysis to determine  
3 existence of minority or low income community and, if  
4 warranted, a detailed examination of the distribution of  
5 impacts on the segments of the population. It points  
6 again within Mariposa environmental or energy project  
7 there is not a significant adverse act on any population  
8 or minority population.

9           STAFF COUNSEL WILLIS: After reviewing the  
10 screening analysis, did you conclude that the area around  
11 the proposed project contained an environmental justice  
12 community?

13           MR. HOFFMAN: No.

14           STAFF COUNSEL WILLIS: Why did you determine  
15 that?

16           MR. HOFFMAN: The area within the six-mile radius  
17 did not meet the criteria. Mountain House community is a  
18 highly affluent and educated community. The Mountain  
19 House survey is indicated May 2009 and was completed by  
20 the Mountain House Community Services District identified  
21 a number of statistics. If I could identify this --  
22 within education is identified that 78 percent had a  
23 college or higher level degree with 50 percent with  
24 college university education, 20 percent a Masters, 8  
25 percent a Doctoral.



1           Household income, 63 percent included above  
2     \$100,000 household income with an average of 119,000.

3           And also a language spoken most at home  
4     identified at 82 percent with English.

5           So we found this community to be a highly  
6     educated and very active. And this is not the type of  
7     community that is typically considered an environmental  
8     justice community as intended under the executive order.

9           STAFF COUNSEL WILLIS: Have you reviewed the  
10    filings by the intervenors regarding environmental  
11    justice?

12          MR. HOFFMAN: Yes, I have.

13          STAFF COUNSEL WILLIS: And have any have those  
14    documents changed your opinion?

15          MR. HOFFMAN: No, they have not.

16          STAFF COUNSEL WILLIS: Mr. Singh had filed some  
17    data regarding minority population. And if Mr. Singh's  
18    data is correct and Mountain House is an environmental  
19    justice community, would that make a difference regarding  
20    staff's compliance with the components of the  
21    environmental justice analysis?

22          MR. HOFFMAN: No, it would not.

23          STAFF COUNSEL WILLIS: And could you explain why  
24    not?

25          MR. HOFFMAN: The first is in regard to public

1 outreach. There's been quite an extensive amount of  
2 public outreach to the Mountain House community. We have  
3 had -- I count seven workshops that have actually taken  
4 place or some type of activity taken place within the  
5 Mountain House community, including an October 1st, 2009,  
6 informational hearing and site visit on October 28th,  
7 although this wasn't a public notice. The public adviser  
8 actually participated in an informal session on a Saturday  
9 in Mountain House to help out the community with  
10 participating in this process. There was a site visit  
11 status conference on October 6th, 2010.

12           There was actually a BBID workshop. Staff held a  
13 public workshop on November 29th at the BBID office on  
14 February 7th. The Mariposa Committee held a prehearing  
15 conference at the BBID conference. And on February 24th  
16 and 25th, evidentiary hearings were held down at the BBID  
17 office down near the Mountain House community.

18           On top of that, there's been a number of other  
19 notices sent out to the community, including the notice of  
20 receipt for the AFC supplemental receipt that went out for  
21 the MEP again. We provided notices to the Native American  
22 Heritage Commission. There have been public notices, data  
23 response workshops, and again, notices the staff  
24 assessment was published as well as the supplemental staff  
25 assessment was published.

1           And on top of that, we've had very active  
2 participation by the Mountain House community. We don't  
3 feel -- staff doesn't feel at this point in time that the  
4 project (inaudible). We also had the Mountain House  
5 Community Services District as an active intervenor in  
6 this project for about the last year.

7           STAFF COUNSEL WILLIS: Thank you.

8           Ms. Stennick, moving on to property values, does  
9 staff generally analyze potential impacts to property  
10 values?

11          MS. STENNICK: No. That's not part of the  
12 socioeconomic analysis that we perform at the Energy  
13 Commission for siting cases.

14          STAFF COUNSEL WILLIS: And did you review the  
15 paper entitled, "The effect of power plants on local  
16 housing values and rents," by Lucas W. Davis?

17          MS. STENNICK: Yes, I did.

18          STAFF COUNSEL WILLIS: Did you have any comments  
19 on that?

20          MS. STENNICK: The paper that was provided I read  
21 it and it didn't seem applicable to this particular case,  
22 nor to California in general, because the power plants  
23 analyzed in the Davis study wrote that non-cogeneration  
24 fossil fuel plants, which we don't license here in  
25 California. Assuming that a number of those plants

1 included coal fire plants.

2 Another issue regarding the Davis paper was the  
3 paper analyzed -- or included negative externalities such  
4 as air quality issues, public health issues, noise,  
5 traffic, and hazardous materials as contributing to the  
6 decline of property values in the Davis study.

7 Again, in California, all of these areas are  
8 evaluated under CEQA and any impacts would be mitigated.

9 STAFF COUNSEL WILLIS: Thank you.

10 Ms. Ford, just a few final questions. In your  
11 professional opinion, will this project pose any  
12 significant adverse impacts in the area of socioeconomics?

13 MS. FORD: No.

14 STAFF COUNSEL WILLIS: Is this project in  
15 compliance with all laws, ordinance, regulations, and  
16 standards?

17 MS. FORD: Yes.

18 STAFF COUNSEL WILLIS: That concludes direct.  
19 These witnesses are available for cross-examination.

20 HEARING OFFICER CELLI: Thank you. Cross,  
21 applicant, if any?

22 MS. POTTENGER: None.

23 HEARING OFFICER CELLI: Thank you.

24 Mr. Sarvey, do you wish to cross?

25 MR. SARVEY: Yes, I do.

1 HEARING OFFICER CELLI: Go ahead.

2 CROSS-EXAMINATION

3 MR. SARVEY: Mr. Hoffman, can you tell me what  
4 qualifications you have to do a socioeconomic analysis?

5 MR. HOFFMAN: In this case, I actually didn't do  
6 the socioeconomics analysis. I took the demographic  
7 information and passed that along so that environmental  
8 justice --

9 MR. SARVEY: I apologize. I meant environmental  
10 justice. I'm sorry.

11 MR. HOFFMAN: What are my qualifications to do an  
12 environmental justice?

13 MR. SARVEY: Correct.

14 MR. HOFFMAN: The environmental justice analysis  
15 requires you to take a look and see if the project meets  
16 the requirements anything above 50 percent from minority  
17 population or above 50 percent from poverty level. And I  
18 have an education that lets me understand 50 percent. I  
19 went to school, took advanced statistics. I don't know if  
20 that answered that.

21 HEARING OFFICER CELLI: Mr. Sarvey, are you  
22 challenging the expertise?

23 MR. SARVEY: Yes, I am.

24 I'll ask you again, other than knowing about  
25 50 percent, what's your qualifications to do an

1 environmental justice analysis? I read your resume and I  
2 don't see any.

3 MR. HOFFMAN: This is my first project in which  
4 there's been an environmental justice challenge. I  
5 deferred that to the technical staff that completes these  
6 sections. Within this project, I was given the  
7 information that identified that there was not an  
8 environmental justice population. What's important for me  
9 is to make sure that we have active participation through  
10 this process.

11 And in this case, not only has this process been  
12 actively noticed, we've had a strong participation in the  
13 Mountain House community, both in San Joaquin County, but  
14 also the Mountain House community that exists within  
15 Alameda County.

16 But above and beyond that, technical staff  
17 identified that this project would not have a significant  
18 impact upon the environment, both to a minority population  
19 or any population in that matter. So what is my expertise  
20 on the environmental justice community, we didn't get  
21 there, because the project was already -- as staff worked  
22 through it, we didn't find any significant impacts. I  
23 guess I can't answer any better than that.

24 MR. SARVEY: I move to strike Mr. Hoffman's  
25 testimony.

1 HEARING OFFICER COTE: On what base?

2 MR. SARVEY: Unqualified.

3 HEARING OFFICER CELLI: Overruled.

4 STAFF COUNSEL WILLIS: Mr. Celli, may I just  
5 remind these witnesses are testifying as a panel for a  
6 reason. That not each person -- it is the whole. So I  
7 think that if there is any other qualification issues that  
8 we need to look at, we also have Ms. Stennick and Ms. Ford  
9 here as well.

10 MR. SARVEY: I'll renew my objection for the  
11 record.

12 HEARING OFFICER CELLI: Overruled.

13 MR. SARVEY: No. I understand. But for the  
14 record, I just want to let you know that I object to your  
15 ruling.

16 Do any of you know the margin of error for the  
17 U.S. Census?

18 MS. STENNICK: It depends on which aspect of the  
19 Census you're referring to, which there -- I don't  
20 understand the question.

21 MR. SARVEY: Do you know the margin of error for  
22 the U.S. Census? Do they miss people or is it --

23 MS. STENNICK: For the Census, it's  
24 100 percent -- each household is mailed a Census  
25 questionnaire and it's self reporting and each --

1           MR. SARVEY: What was the response rate for the  
2 2000 Census?

3           MS. STENNICK: I don't have the answer to that  
4 question.

5           MR. SARVEY: So you're not positive to the 2000  
6 Census is accurate and the number accounted the people  
7 within six miles; is that correct?

8           MS. STENNICK: It's considered the most  
9 accurate -- again, I don't have a number for you.

10          MR. SARVEY: Is it common for a minority to be  
11 unrepresented in a U.S. Census?

12          MS. STENNICK: As I said, the questionnaires are  
13 mailed to each household. If you don't have an address,  
14 you probably don't get an application.

15          MR. SARVEY: Would it be more likely for a  
16 minority not to have an address or not to respond to the  
17 Census to your knowledge?

18          STAFF COUNSEL WILLIS: Object. This witness --

19          HEARING OFFICER CELLI: What was the objection?

20          STAFF COUNSEL WILLIS: This is outside this  
21 witness's testimony. She isn't an expert on how the U.S.  
22 Census is taken. She's relied on that data as the most  
23 accurate data available.

24          HEARING OFFICER CELLI: I'm going to sustain a  
25 speculation objection. But this witness has relied on the



1 Census and should be able to testify about it. But in  
2 this particular question, I think is speculative. So  
3 sustained.

4 MR. SARVEY: In your analysis of the minority  
5 population, you reference the 2000 Census. Is that what  
6 you're completely resting your conclusion that this is not  
7 a minority population and within a six-mile radius?

8 MS. STENNICK: As staff has already testified, we  
9 used the Census 2000 data. We also included data from the  
10 Mountain House survey and there was also some data from  
11 the American communities survey which provides estimates  
12 for Census tracts and ZIP codes that we took a look at.

13 MR. SARVEY: And when you combined the Mountain  
14 House data and the 2000 Census data, what is your  
15 percentage of minorities that you come up with?

16 MS. STENNICK: Well, I think we need to be  
17 specific when we're talking about "Mountain House" Census  
18 data. The Mountain House is an unincorporated community  
19 in San Joaquin County. It is not an incorporated  
20 communities. The Census tract and the ZIP code that  
21 contains Mountain House also contains portions of the city  
22 of Tracy. So it would be really inaccurate to combine  
23 that data with the data from the 2000 Census.

24 MR. SARVEY: The Mountain House data you're  
25 referring to also includes the city of Tracy you said; is

1 that correct?

2 MS. STENNICK: The Census tract that the  
3 community services survey did an estimate for does not --  
4 does not end at the borders of the community of Mountain  
5 House. It includes other -- it includes a greater area  
6 than just the community of Mountain House.

7 MR. SARVEY: What was the total population of the  
8 number of folks that you used in your analysis to show  
9 that this was not a minority community?

10 MS. STENNICK: As I said, we relied on the 2000  
11 Census data. And bear with me -- socioeconomics Figure 1  
12 shows the total population within a six mile radius as 2,  
13 164.

14 MR. SARVEY: And the Mountain House data was how  
15 many people?

16 STAFF COUNSEL WILLIS: Just clarification if he's  
17 asking for a survey data or --

18 MR. SARVEY: Survey data.

19 HEARING OFFICER CELLI: I think she's got the  
20 answer to the question.

21 MS. STENNICK: The Mountain House community  
22 demographics, the survey that was done in 2009 shows there  
23 was approximately 9,930 individuals within the Mountain  
24 House community.

25 MR. SARVEY: Okay. And did you consult with the

1 Mountain House Community Services District on whether they  
2 considered their Census accurate?

3 MS. STENNICK: No.

4 MR. SARVEY: Okay. So the total population that  
5 you used in your analysis is 1,294; would that be correct?

6 MS. STENNICK: No. When we did the analysis to  
7 determine whether or not there was the presents of a  
8 minority or low income community, as I said, I've already  
9 said this three or four times, we relied on the 2000  
10 Census data.

11 MR. SARVEY: That was the question I asked, and  
12 you said you did rely on the Mountain House data. So I'm  
13 just trying to --

14 MS. STENNICK: We looked at the Mountain House  
15 community survey that was done in I believe it was May of  
16 2009. But we based -- we based our determination of the  
17 presence or the non-presence of a minority population  
18 based on the 2000 Census data because we had not received  
19 this information at the time we began our analysis.

20 MR. SARVEY: So you only considered the 2000  
21 Census data? That would have been a good answer. We  
22 would have skipped all these other questions, is that  
23 correct, to determine whether this was a minority  
24 population?

25 MS. STENNICK: That's correct.

1           MR. SARVEY: And since you made that  
2 determination, have you taken a look at the Census data  
3 provided by Mountain House and determined whether you have  
4 a minority population or not?

5           MS. STENNICK: I'm sorry. The Census data  
6 provided by Mountain House, which Census data are you  
7 referring to?

8           MR. SARVEY: The 9,930 folks that you mentioned  
9 in their community survey.

10          MS. STENNICK: You're asking me if I took a look  
11 at this document that I just --

12          MR. SARVEY: Since you made your determination in  
13 your FSA that you were only going to rely on the Census  
14 data, the 2000 Census data.

15          MS. STENNICK: I'm sorry. Could you repeat your  
16 question?

17          HEARING OFFICER CELLI: Actually, Mr. Sarvey, I  
18 think she's getting confused, because you called the  
19 Mountain House survey a Census.

20          MR. SARVEY: Well --

21          HEARING OFFICER CELLI: I think we should  
22 probably --

23          MR. SARVEY: Thank you for correcting that.

24          So basically -- we can skip all that. You used  
25 the 2000 Census data. That's fine. I'm sorry. I don't

1 want to keep beating you around the bush since you never  
2 looked at it.

3           Would the number one principle of environmental  
4 justice be to sample the community to find out whether  
5 they have an EJ community or not?

6           MS. STENNICK: The way an environmental justice  
7 analysis or demographic screening analysis is done here at  
8 the Energy Commission, it's composed of three parts.

9           One is to identify a potential area that could be  
10 affected by impacts from a project.

11           The second is to determine whether there is a  
12 significant population of minority or low income people  
13 living within that potentially effected area.

14           And thirdly, a determination of whether there may  
15 be a significant adverse impact on a population, a low  
16 income or minority population that would be caused by the  
17 project.

18           MR. SARVEY: I'll repeat the question. Is the  
19 number one element of any environmental justice analysis  
20 determining whether you have a minority community or not?  
21 Just a question or not. It's not a tough one.

22           MS. STENNICK: I would say they're all of equal  
23 weight. First of all, if there is a proposed project, you  
24 need to identify the potential area of impact. And if  
25 that impact is -- if that potential area of impact

1 comprises an environmental justice population.

2 MR. SARVEY: Is that a yes or no?

3 MS. STENNICK: I'm sorry. A yes or no to what?

4 MR. SARVEY: Is it the number one --

5 MS. STENNICK: Let me just answer your question  
6 by saying in my professional opinion, you can't -- you've  
7 got to identify a potential area of impact if the -- and  
8 whether that potential area of impact is comprised of a  
9 minority or low income population.

10 MR. SARVEY: Has staff conducted the Governor's  
11 Office of Planning and Research on the potential minority  
12 community within a six-mile radius of this project?

13 MS. STENNICK: Has staff conducted a --

14 MR. SARVEY: Contacted. I'm sorry. I apologize.

15 MS. STENNICK: Contact OPR?

16 MR. SARVEY: Yes.

17 MS. STENNICK: Regarding this Particular Mariposa  
18 Energy Project?

19 MR. SARVEY: Yes.

20 MS. STENNICK: No.

21 MR. SARVEY: Has staff met with the minority  
22 leaders of this community to hear their concerns?

23 MS. STENNICK: As Mr. Hoffman said, there have  
24 been several meetings in the community. There's been  
25 outreach by the Public Advisor's Office. I'm not sure,

1 seven or eight meetings.

2 MR. SARVEY: Has staff contacted the minority  
3 leaders of this community to hear their concerns. Have  
4 they directly contacted them?

5 MS. STENNICK: That --

6 MR. HOFFMAN: As far as meeting directly with  
7 what you would consider -- I guess can you explain to me  
8 minority leader?

9 MR. SARVEY: Every community has leaders in it.  
10 Some people like say you got NAACP. You've got somebody  
11 that's the (inaudible) chapter in there --

12 MR. HOFFMAN: Well, this project has three  
13 intervenors. Currently, we have the Mountain House  
14 Community Services District that acts as a leader for the  
15 entire Mountain House community. So I would consider that  
16 we have two minority leaders that are both participating  
17 as intervenors.

18 MR. SARVEY: Did you outreach specifically to the  
19 minority community leaders about this project? It's a  
20 simple question, a yes or no. That's all I ask.

21 MR. HOFFMAN: No, I did not.

22 MR. SARVEY: Okay. Thank you.

23 Has staff met with supervisor Leroy Ornellas and  
24 heard his concerns about this project?

25 HEARING OFFICER CELLI: Supervisor who?

1 MR. SARVEY: Leroy Ornellas.

2 HEARING OFFICER CELLI: How do you spell that?

3 MR. SARVEY: O-r-n-e-l-l-a-s.

4 HEARING OFFICER CELLI: Thank you.

5 MR. SARVEY: He's district five supervisor.

6 MR. HOFFMAN: He was sent correspondence about  
7 the project and has not contacted staff about it.

8 MR. SARVEY: Did you outreach to him, call him  
9 up?

10 MR. HOFFMAN: I did not call him. We sent  
11 letters to all the supervisors, both in San Joaquin  
12 County, in Alameda County, and Contra Costa County.

13 MR. SARVEY: It's whether a project has a  
14 significant cumulative impact, is it the staff or the  
15 Commissioners, the Commission?

16 MR. HOFFMAN: Well, ultimately, it's the full  
17 Commission that will make a determination. But if you're  
18 looking at who prepared the individual staff assessments  
19 sections and the staff made the determination that we did  
20 not find significant impacts in the technical sections.  
21 That's our document. Ultimately, based upon this  
22 evidentiary hearing then moving forward, the Committee  
23 will make a recommendation on to the full Commission.

24 MR. SARVEY: So if the Committee decides there is  
25 a significant impact from this project, where does that



1 leave your environmental justice analysis?

2 MR. HOFFMAN: They'll have to make that  
3 determination at a later date.

4 MR. SARVEY: And then will your environmental  
5 justice analysis be valid?

6 MR. HOFFMAN: Staff completed our environmental  
7 analysis and we feel that's our information. Staff feels  
8 that there is not an environmental justice issue on this  
9 project. The Committee will have to make that decision on  
10 their own.

11 MR. SARVEY: Mr. Hoffman, have you ever heard of  
12 the precautionary principle?

13 MR. HOFFMAN: No.

14 MR. SARVEY: Are you aware the precautionary  
15 principle is the primary element of any environmental  
16 justice analysis?

17 STAFF COUNSEL WILLIS: Objection. He already  
18 answered he wasn't aware of that.

19 HEARING OFFICER CELLI: I'll go with that.  
20 Sustained.

21 MR. SARVEY: Has the Commission offered any  
22 advanced notice of this hearing today and given the public  
23 a time when they can call in and comment on this?

24 STAFF COUNSEL WILLIS: Objection --

25 HEARING OFFICER CELLI: Sustained.

1 MR. SARVEY: Has staff examined the existing  
2 health statistics for the minority population, including  
3 hospital admission data and other relevant health data?

4 MS. STENNICK: That would be in the public health  
5 section, not the socioeconomic section.

6 MR. SARVEY: Has the staff in the public health  
7 section done so?

8 MS. STENNICK: I can't answer that question.

9 HEARING OFFICER CELLI: You know, we're getting a  
10 little far afield here. Public health, we've already  
11 heard.

12 MR. SARVEY: They're relying on the public  
13 health's testimony that there is no impact. I'm asking --

14 HEARING OFFICER CELLI: Let me --

15 MR. SARVEY: If you're going to communicate --

16 HEARING OFFICER CELLI: Let's do this. He asked  
17 a yes or no question. And I believe the answer would be  
18 no, you didn't do such an analysis; is that correct?

19 MS. STENNICK: I did not do a public health  
20 analysis.

21 HEARING OFFICER CELLI: Thank you. Go ahead.  
22 Next question.

23 MR. SARVEY: Have you seen or has staff analyzed  
24 the cumulative impacts that are predicted in Exhibit 412?

25 MS. STENNICK: Could you identify Exhibit 412?

1           MR. SARVEY: Exhibit 412 is PDS Increment  
2 Consumption Status Report, April 16th, 2008, Bay Area Air  
3 Quality Management District.

4           MS. STENNICK: Again, that would be a question  
5 for the air quality analyst. We did not -- we only  
6 analyzed socioeconomic issues.

7           MR. SARVEY: To your knowledge, has staff  
8 designed a hazardous materials route to avoid the minority  
9 community?

10          STAFF COUNSEL WILLIS: I'm going to object to  
11 these questions. They're way off --

12          HEARING OFFICER CELLI: Sustained.

13          MR. SARVEY: Are you aware that there's currently  
14 another power plant on this parallel infrastructure  
15 substantial proposed for the MEP?

16          MS. STENNICK: Are you referring to the Byron  
17 cogeneration?

18          MR. SARVEY: Yes.

19          MS. STENNICK: Then I must be familiar with it.

20          MR. SARVEY: Well, we finally got a good answer  
21 there.

22          From a socioeconomic standpoint, does the  
23 addition of a second power plant on this parallel  
24 infrastructure substantial signal to the investment  
25 community that this agricultural area is available for

1 power plant development?

2 MR. WHEATLAND: Objection. Beyond the scope of  
3 this witness's --

4 HEARING OFFICER CELLI: Sustained.

5 Next question.

6 MR. SARVEY: Does the socioeconomic analysis look  
7 at the property values at all?

8 MS. STENNICK: When the community raises concerns  
9 regarding property values, historically, staff and the  
10 socioeconomic section has taken a look at various studies,  
11 which we've done this in the past with the San Francisco  
12 energy project. So the Crockett Cogeneration facility and  
13 I believe one other facility which I can't remember the  
14 name of.

15 MR. SARVEY: In Exhibit 301 page 4.8-1 of your  
16 testimony, you state that staff provides a discussion of  
17 the estimated beneficial economic impacts of the  
18 construction and operation of the proposed project. Does  
19 staff present any negative economic impacts of the  
20 construction operation of the proposed project?

21 MS. STENNICK: Could you identify which page  
22 you're reading from?

23 MR. SARVEY: Exhibit 301 page 4.8-1.

24 MS. STENNICK: And your question was does staff  
25 take a look at negative or disbenefits?

1           MR. SARVEY: Negative socioeconomic benefits from  
2 this project. I only see positive ones, so I'm just  
3 asking.

4           MS. STENNICK: Well, we took a look at property  
5 tax derived from this project. We took a look at spending  
6 from construction, operation and maintenance that did not  
7 appear in our analysis to be any dis-benefits to the  
8 communities surrounding the project.

9           MR. SARVEY: Your table on page 4.8-3 of Exhibit  
10 301 states, "A CEQA impact would occur if the project  
11 would result in substantial adverse fiscal impacts  
12 associated with the provision of new or physically altered  
13 government facilities need for new or physical altered  
14 government facilities, the construction of which could  
15 cause significant environmental impacts in order to  
16 maintain acceptable service ratios, response times, or  
17 other performance objectives for any of the public  
18 services." Is that correct?

19           MS. STENNICK: That's how it reads, yes.

20           MR. SARVEY: Do you know what the Alameda  
21 County's fire response goals and how these the MEP  
22 response time compares to those?

23           STAFF COUNSEL WILLIS: I'm going to object.  
24 That's outside the scope.

25           HEARING OFFICER CELLI: Sustained.

1           MR. SARVEY: Excuse me. It says right here that  
2 CEQA impact would occur if it had an impact to service  
3 ratios or response times. What's the objection? I don't  
4 understand.

5           STAFF COUNSEL WILLIS: Mr. Sarvey knows this  
6 issue is dealt with in worker safety and fire protection.

7           HEARING OFFICER CELLI: Right. And in fact was  
8 raised in your exhibit -- I can't remember which one it  
9 was with regard to fire safety.

10          MR. SARVEY: So then staff does not look at  
11 service ratios or response times in their socioeconomic  
12 analysis. So that statement is incorrect; is that right?

13          HEARING OFFICER CELLI: You can answer that.  
14 That's a yes or no.

15          You have to keep it turned on. Apparently, it's  
16 now off.

17          Matt Dowell, if you're on the line, this would be  
18 a good time to come running in like Superman and save the  
19 day.

20          You just did something that made it --

21          MR. SIMPSON: I'd like to make a motion that we  
22 break for lunch. It's 12:00.

23          MR. SARVEY: I'll second it.

24          HEARING OFFICER CELLI: Mr. Sarvey, we've been on  
25 the record all this time. But Mr. Dowell, if you're on

1 the line, I'm going to need a new battery for this  
2 cordless mike.

3 What was your last question, Mr. Sarvey? I'm  
4 sorry.

5 MR. SARVEY: I've forgotten, to be honest with  
6 you.

7 HEARING OFFICER CELLI: How many more questions  
8 do you have?

9 MR. SARVEY: Probably about four or five.

10 So the statement on page 4.83 that I referenced  
11 earlier, socioeconomic, staff does not evaluate a CEQA  
12 impact in terms of acceptable service ratios and response  
13 times or other performance objectives have any public  
14 service?

15 MS. STENNICK: Our analysis includes information  
16 on that particular issue it's on 4.8-7 and we also work  
17 very closely with hazardous materials, worker safety and  
18 fire protection regarding response times and provision of  
19 whether or not provision of new building would be  
20 required.

21 MR. SARVEY: Do you know if Alameda has any  
22 policies related to development and response times for  
23 emergency services in eastern Alameda County?

24 MR. WHEATLAND: Objection. Beyond the scope --

25 HEARING OFFICER CELLI: Sustained.

1           MR. SARVEY: I thought we were trying to take  
2 worker safety and fire protection off the table, Mr.  
3 Celli, but I guess we aren't.

4           HEARING OFFICER CELLI: Any further questions?

5           MR. SARVEY: Yes, I do. On page 4.8-12 your  
6 testimony states that the studies that you evaluated on  
7 property values have generally concluded that over time  
8 any adverse property value impacts diminished within five  
9 years. Is that your testimony?

10          MS. STENNICK: The information that we've  
11 provided in response to the community's concerns on  
12 property values, yes, the studies have generally concluded  
13 that over time any adverse property value impacts  
14 diminished. Those are what the studies that we've looked  
15 at have shown.

16          MR. SARVEY: And does staff agree with those  
17 studies?

18          MS. STENNICK: We agree with the findings of  
19 those studies.

20          HEARING OFFICER CELLI: There's your answer. Go  
21 ahead. Next question.

22          MR. SARVEY: So if you're underwater right now  
23 and you're trying to sell your house right now, would that  
24 five years of diminished property value be a socioeconomic  
25 impact?



1 MS. STENNICK: I think we have to remember that  
2 we're looking at project induced changes, not just -- not  
3 general economic induced changes.

4 MR. SARVEY: I'll ask the question the last time.  
5 This is my last question, too.

6 HEARING OFFICER CELLI: But I think you got the  
7 answer. But let's go ahead.

8 MR. SARVEY: I don't believe I did.

9 If you're under water and you're trying to sell  
10 your house right now and you're in Mountain House, would  
11 the five years diminished property values be a  
12 socioeconomic impact to that seller?

13 MS. STENNICK: Frankly, I don't understand the  
14 question.

15 MR. SARVEY: I'm a home seller. I own a home in  
16 Mountain House. I oh \$600,000 and the house is worth  
17 \$300,000. MEP moves in. The property values are  
18 diminished according to your testimony within five years.  
19 If I'm trying to sell my house right now, as a homeowner  
20 in Mountain House, would those five years diminished  
21 property values be a socioeconomic impact?

22 MS. STENNICK: There's not been a property values  
23 impact analysis done for the Mountain House community on  
24 this particular project. That's my answer.

25 MR. SARVEY: So you're not going to answer my

1 question?

2 MS. STENNICK: I answered your question.

3 HEARING OFFICER CELLI: She answered your  
4 question. Next question.

5 MR. SARVEY: That's the last question, Mr. Celli.

6 HEARING OFFICER CELLI: Thank you.

7 My questions of these witnesses from the Mountain  
8 House Community Services District?

9 MR. GROOVER: I think I have two quick ones and  
10 Mr. Lamb may have a quick one as well.

11 On or about -- I don't need an exact date. When  
12 was the staff report prepared?

13 MS. FORD: The staff assessment?

14 MR. GROOVER: Yes. I'm sorry.

15 MS. FORD: December 2010.

16 MR. GROOVER: Okay. We use 2000 Census that  
17 showed 2000 people in the Census tract and we had  
18 information that there was more than 10,000 people in  
19 Mountain House. Is it normal when to look at the  
20 community and ignore it when there's that big of a  
21 disparity between the numbers you're using and the numbers  
22 that are obviously there?

23 MS. FORD: Where did you get your information?

24 MR. GROOVER: I'm quoting information that you  
25 provided -- or the city of Mountain House survey that says

1 there's 9,930 people and your 2000 Census that said  
2 there's 2000 people. So there's five times as many people  
3 in the town of Mountain House that were obviously there in  
4 2008/2009 and obviously there when you did your staff  
5 report in 2010. Is it normal to ignore the disparity in  
6 numbers?

7 STAFF COUNSEL WILLIS: I'm going to object. That  
8 assumes facts not in evidence --

9 HEARING OFFICER CELLI: Overruled.

10 STAFF COUNSEL WILLIS: -- as far as ignoring --

11 HEARING OFFICER CELLI: It's a characterization.  
12 But I think you can see through that and answer the  
13 question.

14 STAFF COUNSEL WILLIS: Well, they already  
15 testified they looked at the Mountain House Community  
16 Services District survey. So to say that they ignored  
17 Mountain House --

18 MR. GROOVER: I can rephrase that.

19 STAFF COUNSEL WILLIS: -- assumes facts not in  
20 evidence.

21 HEARING OFFICER CELLI: Let's just rephrase the  
22 question.

23 MR. GROOVER: Thank you. I apologize if it  
24 sounded like I was trying to insinuate anything.

25 Understanding that the staff actually did look

1 into surveying that Mountain House prepared and staff  
2 would have been aware that there was 10,000 people in  
3 Mountain House, would it then be normal to go and use the  
4 2010 data that says there's only 2000 people in the Census  
5 tracts?

6 HEARING OFFICER CELLI: Is that normal?

7 MS. STENNICK: When staff started the analysis on  
8 this particular project, we probably began our analysis in  
9 2009. The information the Mountain House communities  
10 survey, which is not -- is not Census data. It's a survey  
11 done by the Community Services District, that information  
12 did not become available to us until after we had  
13 published the preliminary staff assessment.

14 MR. GROOVER: Mr. Celli, all of that information  
15 was previously testified to. I'm totally aware of what  
16 she just said. She's repeated that more than once. But  
17 none of that addressed my question of whether staff being  
18 aware that there's 10,000 people there and using 2000 --

19 MS. STENNICK: Regardless -- may I answer your  
20 question?

21 HEARING OFFICER CELLI: Ms. Stennick, let me just  
22 ask you this, because it's a yes or no question. Is it  
23 normal practice to rely on the Census?

24 MS. STENNICK: Yes, it is normal practice for the  
25 type of analysis that we do at the Energy Commission on

1   siting cases.

2           HEARING OFFICER CELLI:   Okay.   Would it be normal  
3   practice in view of the fact that you know factually there  
4   are more people there than is reflected in the Census?   Is  
5   would that be a normal practice to rely on the Census?

6           MS. STENNICK:   Yes, it would.

7           HEARING OFFICER CELLI:   There's your answer.

8           MR. GROOVER:   Thank you.

9           HEARING OFFICER CELLI:   Mr. Lamb, go ahead.

10          MR. GROOVER:   I had two questions.   That was one  
11   of them.

12          I'm asking this not to sandbag anyone.   I just  
13   don't know.

14          I recall during the 2000 Census the federal  
15   government was concerned about minority representations in  
16   the Census.   Are you aware of whether minorities tend to  
17   answer survey or Census questions that are sent to them in  
18   English?

19          MR. WHEATLAND:   Objection.   Assumes facts not in  
20   evidence for one thing.   The surveys are not always sent  
21   in English.   This is way beyond the scope of this  
22   witness's testimony.

23          HEARING OFFICER CELLI:   First thing I'm going to  
24   ask is we're going to have to -- what happens right now,  
25   listen, is the fan.   It's your mike.   We get that rumbling

1 sound. It's distracting. Maybe if we do that -- now,  
2 your objection had to do with the objection being sent out  
3 in English? Was that --

4 MR. WHEATLAND: The question goes way beyond the  
5 scope of this witness's testimony. We previously  
6 established they're not here to testify on the details of  
7 the 2000 Census.

8 HEARING OFFICER CELLI: Of the actually  
9 procedures used by the Census takers and that sort of  
10 thing, okay. Sustained.

11 Mr. Sarvey, we've already heard from you.

12 MR. SARVEY: Just one point of clarification.  
13 That's all.

14 HEARING OFFICER CELLI: Just hold it until we  
15 come around.

16 MR. LAMB: We've established that you guys have  
17 used primarily the 2000 Census and you did review the data  
18 that Mountain House Community Services District provided.  
19 In your professional opinion, I understand that the  
20 guidelines are that you use the Census data. But in your  
21 professional opinion, is that relevant, the 2000 Census,  
22 to analyze the impact on a community that didn't exist  
23 until 2003. I'm not asking what the process is. I'm  
24 asking that it's fair to say that that Census data is  
25 relevant at all if the community didn't exist in 2000?

1 MS. STENNICK: I understand your question. I  
2 think it's a very fair question. You have to keep in mind  
3 that we're not -- that this process does not evaluate the  
4 effects solely on the community of Mountain House. It  
5 takes a look at the potential impacts on a six-mile radius  
6 around the project site. And the only data we have to use  
7 to determine the demographics is the 2000 Census data.  
8 Well, fortunately, the 2010 data will be out very soon,  
9 in, in April.

10 We considered once we became aware of the other  
11 information, we certainly considered whether or not the  
12 area of potential impact would fall on a minority  
13 community. However, in the overall analysis, there were  
14 no significant adverse unmitigated impacts. Therefore --

15 MR. LAMB: I'm not arguing that point.

16 MS. STENNICK: Okay.

17 MR. LAMB: In fact, you've made very clear there  
18 is three aspects to this. But the analysis relies on all  
19 three aspects. So all I'm trying to nail down is in your  
20 professional opinion, not what the statute requires you to  
21 do, but is 2000 data relevant whether the population has  
22 increased five-fold and in the communities sense then? Is  
23 that a reliable indicator if there is a community that  
24 doesn't exist when that data was collected? I guess what  
25 I'm trying to -- do you believe that the 2000 Census data

1 has any value in the context of this project in this  
2 analysis? I understand you don't have the data. But is  
3 it relevant --

4 MS. STENNICK: Well, I don't think we can accept  
5 one and not accept the other. I think what we've done is  
6 taken all of the Census information, including the non  
7 Census information that was brought to our attention from  
8 the Mountain House community survey. I also took a look  
9 at American Community Survey which does five-year  
10 estimates based on as I said earlier Census tracts. So  
11 that information was available to us.

12 The presence of a minority population, the  
13 purpose of that is to determine whether there is a need  
14 for translation, whether there are people who have been  
15 historically marginalized from public participation. And  
16 I think that's been well documented by the Project  
17 Manager, Craig Hoffman.

18 MR. LAMB: I guess where I'm driving at -- and I  
19 don't know if it's the appropriate place to do it -- I'm  
20 challenging the evidence as being relevant.

21 HEARING OFFICER CELLI: Mr. Lamb, I think we've  
22 taken this as far as we can. The Committee is cognizant  
23 of the fact that you have 2000 Census and we're dealing  
24 with a community that began in 2003. So they're not in  
25 the 2000 Census. We get that.



1           MR. LAMB: Good. Just wanted to get that on the  
2 record.

3           HEARING OFFICER CELLI: That's so in the record.

4           MR. LAMB: Perfect.

5           HEARING OFFICER CELLI: I think that -- let's  
6 move on. Mr. Dighe, go ahead.

7           MR. DIGHE: Is it a good time for lunch break?

8           HEARING OFFICER CELLI: You know, noon time is  
9 always a good time for lunch. But I thought what we would  
10 do is get through these witnesses and then we would  
11 discuss taking a break. I also want Mr. Dighe to show  
12 your video -- I was actually going to play the video so  
13 it's in the record and we all have a transcript of what it  
14 says. It's a ten-minute video. It's short. But we can  
15 do that after the break.

16          MR. DIGHE: You're going to do that after the  
17 break?

18          HEARING OFFICER CELLI: Or maybe during while  
19 people are eating.

20          By the way, I'm just going to say, folks, that  
21 the Rhondavous Deli is going to stay open until 7:00  
22 tonight specifically so you can go upstairs and get a bite  
23 so you don't have to leave the building if you don't want  
24 to.

25          So go ahead, Mr. Dighe, your questions.

1           MR. DIGHE: How much effort was taken by the  
2 staff to contact the intervenor, Rajesh Dighe, which is  
3 me, after you realized about the Census, 2000 Census  
4 issue? Did you actually take any efforts?

5           MR. HOFFMAN: Is this on?

6           HEARING OFFICER CELLI: No.

7           MR. HOFFMAN: Is this on?

8           HEARING OFFICER CELLI: Let Ms. Jennings take a  
9 look at it.

10          MR. WHEATLAND: While they're looking at it, I  
11 object on the basis of relevance. What is the possible  
12 relevance of the applicant's discussion with this  
13 intervenor?

14          HEARING OFFICER CELLI: It might go to outreach.  
15 Let's hear what he says.

16               Is that working, that mike?

17          MR. HOFFMAN: Is that back on?

18          HEARING OFFICER CELLI: Yes. So go ahead and  
19 turn off the mike that's in front of you and you can stand  
20 past the mike.

21          MR. HOFFMAN: I think the issue about whether or  
22 not the 2000 data really captured the community was  
23 brought up I think even pre your intervention into the  
24 project. Staff started looking at the tract to identify  
25 additional demographic information. But how you were

1 contacted, you were contacted consistent with the POS  
2 requirements of noticing.

3 MR. DIGHE: My question was specifically on that.  
4 So I guess we know (inaudible)

5 HEARING OFFICER CELLI: Next question, Mr. Dighe.  
6 Go ahead.

7 MR. DIGHE: So after the public workshop, which  
8 was conducted on November 29th, there was a second public  
9 workshop suggested. Are you aware of any reasons why it  
10 was denied?

11 MR. WHEATLAND: Objection. Relevance.

12 HEARING OFFICER CELLI: Sustained.

13 MR. HOFFMAN: Back in November --

14 MR. WHEATLAND: It was sustained.

15 MR. HOFFMAN: Oh, sorry.

16 MR. DIGHE: Did you go my Exhibit 603 which talks  
17 about potential home buyer which has concerns around  
18 buying homes in Mountain House if MEP comes in? Did you  
19 read my testimony, my Exhibit 603, yes or no?

20 HEARING OFFICER CELLI: Did you read Exhibit 603?

21 MS. STENNICK: Yes, I read the exhibit.

22 MR. DIGHE: Are you aware that the Exhibit 604  
23 shows an elected official giving reasons around opposing  
24 the MEP because it affects Mountain House community? So  
25 did you read my Exhibit 604?

1 MS. FORD: Yes.

2 MR. DIGHE: Are you aware of the fact that  
3 Mountain House residents love green, it's a green  
4 community and that has been stated in my testimonies --

5 MS. FORD: Yes.

6 MR. DIGHE: Are you aware of the immediate public  
7 needs of Mountain House and how -- are you aware of the  
8 immediate public needs of Mountain House?

9 MS. FORD: Can you ask the question again?

10 STAFF COUNSEL WILLIS: Objection. Vague.

11 MR. DIGHE: Are you aware of the major public  
12 infrastructure needs of Mountain House and how and did you  
13 do a study of that?

14 MS. FORD: No.

15 HEARING OFFICER CELLI: The answer was no study  
16 done.

17 MR. DIGHE: Okay. Are you aware of the high  
18 water bills in Mountain House?

19 STAFF COUNSEL WILLIS: Objection. Relevance.

20 HEARING OFFICER CELLI: What's the relevance of  
21 the high water bills, Mr. Dighe, assuming those facts are  
22 going to be shown to be true at some point?

23 MR. DIGHE: Basically the whole city runs on  
24 (inaudible) for the property taxes, special taxes. There  
25 are no businesses. And there is a big (inaudible) in the

1 water bill which the residents of Mountain House are  
2 struggling along with the foreclosure crisis.  
3 (inaudible). And it is a part of one of my exhibits, too.  
4 So are you aware of that? Actually, I have it in my  
5 exhibits.

6 HEARING OFFICER CELLI: Okay. Are you aware of  
7 his exhibit?

8 MS. FORD: I am aware of his exhibits.

9 MR. DIGHE: So are you aware of the (inaudible).  
10 Okay. Thank you.

11 Do you know the property taxes and water bills  
12 around Mountain House, the neighboring cities are way low  
13 than Mountain House?

14 STAFF COUNSEL WILLIS: Objection. Relevance.

15 HEARING OFFICER CELLI: What is the relevance now  
16 with regard to socio?

17 MR. DIGHE: The relevance is basically when new  
18 home buyers when they come to buy homes in Mountain House,  
19 I'm trying to --

20 HEARING OFFICER CELLI: New home buyers will be  
21 scared away you think by the high price of water in  
22 Mountain House, is that the idea?

23 MR. DIGHE: Yes. And once MEP comes in, it adds  
24 a detrimental effect in the mind-set.

25 HEARING OFFICER CELLI: Okay. Because your

1 claim -- is it your claim that the MEP is going to raise  
2 the water costs?

3 MR. DIGHE: No.

4 HEARING OFFICER CELLI: You have to tie it into  
5 the Mariposa Energy Project.

6 MR. DIGHE: My concerns are they are already  
7 struggling with lot of issues in Mountain House and MEP is  
8 going to make it worse, as I talked in earlier discussion.  
9 A lot of environmental around Mountain House and once MEP  
10 comes in, it's going to have detrimental effect on that.  
11 So my thing is the cumulative effect of costs -- of the  
12 costs.

13 HEARING OFFICER CELLI: Okay. So I'm going to  
14 sustain the objection now, because the MEP has nothing to  
15 do with the water costs at the Mountain House community.

16 MR. DIGHE: This is socioeconomic right we are  
17 going through?

18 HEARING OFFICER CELLI: Yes.

19 MR. DIGHE: So as part of socioeconomic, I'm  
20 trying to understand if they really did -- I believe there  
21 was a statement where they said the residents of Mountain  
22 House currently -- I'm trying to understand Mountain House  
23 currently is in spite of -- that's what I'm trying to get  
24 to. There are a lot of --

25 HEARING OFFICER CELLI: Let's ask a question.

1 Did you study the impacts -- now, here's the other thing.  
2 We have yet to get to soil and water. But these witnesses  
3 aren't soil and water witnesses. These are socioeconomic.

4 MR. DIGHE: They're in my exhibits.

5 HEARING OFFICER CELLI: Here's the way they work.  
6 Basically, they take in, they determine what the  
7 demographics are essentially.

8 MR. DIGHE: Sure.

9 HEARING OFFICER CELLI: And if there are impacts,  
10 all the impacts would not come from socioeconomics.  
11 They've come from the other topics, bio, soil and water,  
12 air, et cetera. There is no impacts per say other than  
13 socioeconomics other than the construction force coming  
14 and over running and over using the services of the local  
15 communities, housing, for instance, that kind of thing.

16 MR. DIGHE: So let me put it in little bit  
17 different way. Are you aware that the water bill has got  
18 developer loan, which is a pledge component as a part of  
19 the water bill which the residents say --

20 MR. WHEATLAND: Objection. Relevance.

21 HEARING OFFICER CELLI: That's just not relevant.

22 MR. DIGHE: Okay.

23 HEARING OFFICER CELLI: Mr. Dighe, I understand  
24 that Mountain House -- we all understand that Mountain  
25 House is under water, meaning everybody ohs way more money

1 than their house is worth right now. We understand  
2 there's no -- we've heard there's no businesses there.  
3 There's in grocery, et cetera, that the water bills  
4 apparently seem to be higher than elsewhere. Okay. But  
5 all of those are completely external to the Mariposa  
6 Energy Project, which is what we're here to determine what  
7 the impacts are of the power plant. So --

8 MR. DIGHE: I'll try to come close to my  
9 relevance.

10 HEARING OFFICER CELLI: But the power plant --  
11 unless you have some evidence, which it doesn't sound like  
12 you do. But if you have some evidence, there probably is  
13 no relevance to the power plant, because it hasn't been  
14 built yet.

15 MR. DIGHE: I'll try to come to relevance.

16 HEARING OFFICER CELLI: Okay.

17 MR. DIGHE: Do you think the power plant will  
18 effect the home values of Mountain House?

19 MS. STENNICK: I can't answer that question.

20 HEARING OFFICER CELLI: Can any of your panel  
21 answer that question?

22 MS. STENNICK: I think the question was asked of  
23 Mr. Priestly and I thought he answered it very adequately.

24 MR. DIGHE: Actually, I'm looking for just yes or  
25 no. So I don't want an explanation. It's just do you



1 think it will effect the prices of the homes in Mountain  
2 House?

3 MS. STENNICK: Our analysis has found it to be  
4 no.

5 HEARING OFFICER CELLI: There you go.

6 MR. DIGHE: Have you been in Mountain House as a  
7 part of this study of social economic study (inaudible)?

8 HEARING OFFICER CELLI: Sorry. What was the  
9 answer?

10 STAFF COUNSEL WILLIS: Can you repeat the  
11 question?

12 HEARING OFFICER CELLI: He asked if they've ever  
13 been to Mountain House as part of their study.

14 MS. FORD: I've driven past.

15 HEARING OFFICER CELLI: She drove past it.

16 MR. DIGHE: So you've not been to Mountain House.  
17 So they just pass. So the answer is no, right?

18 MS. FORD: Repeat the question.

19 MR. DIGHE: So the answer is no? You have not  
20 been in Mountain House?

21 MS. FORD: Correct.

22 MR. DIGHE: Would you buy a home in Mountain  
23 House?

24 MR. WHEATLAND: Objection, relevance.

25 MR. DIGHE: Would you buy a home in Mountain

1 House that's close to a power plant?

2 MR. WHEATLAND: Objection. Relevance.

3 HEARING OFFICER CELLI: This is all argumentative  
4 and it's -- you need to get to your questions having to do  
5 with socioeconomics at the Mariposa Energy Project.

6 MR. DIGHE: When you did a socioeconomic study,  
7 did you consider the mind-set of the people as a part of  
8 the function which effects home values in Mountain House?

9 HEARING OFFICER CELLI: Do you do any analysis of  
10 the mind-set of the people let's say within the four- to  
11 six-mile radius of the project? That's a yes or no  
12 question.

13 MS. STENNICK: No, we don't.

14 HEARING OFFICER CELLI: There we go. Next  
15 question.

16 MR. DIGHE: Is MEP going to help with the current  
17 public infrastructure needs of Mountain House?

18 HEARING OFFICER CELLI: Will MEP help with the  
19 current infrastructure needs of Mountain House?

20 MS. STENNICK: No.

21 MR. DIGHE: Or public services of Mountain House,  
22 next question?

23 HEARING OFFICER CELLI: Will the MEP help with  
24 the public services of Mountain House?

25 MS. STENNICK: Help generate them? Help create

1 them? Is that your question?

2 MR. DIGHE: Yes.

3 HEARING OFFICER CELLI: They need to know what  
4 you mean by help.

5 MR. DIGHE: So are you aware that Mountain House  
6 has got no businesses when you did the -- were you aware  
7 that Mountain House has got no businesses when you did  
8 your study -- socioeconomic study in the context of the  
9 MEP project?

10 MS. STENNICK: Our analysis was not focused on  
11 the community of Mountain House. Yes, we are aware that  
12 Mountain House is a planned development community in San  
13 Joaquin County has currently has little to no services, no  
14 public transportation. One would call that leap frog  
15 development.

16 HEARING OFFICER CELLI: Mr. Dighe, I think that  
17 what they're aware of is the define infrastructure  
18 situation of Mountain House. And I don't think we need to  
19 make that much of a record bit any more, since it's pretty  
20 clear.

21 MR. DIGHE: Did you go over my Exhibits 609 and  
22 the table, the table at the end of Exhibit 609?

23 MS. FORD: Can you tell me what Exhibit 609 is,  
24 please?

25 MR. DIGHE: It's opening testimony.

1 MS. FORD: What was your question?

2 MR. DIGHE: Did you go over my Table 1 -- Table  
3 with items 1 to 7 in the Exhibit 609.

4 MS. FORD: Table 1?

5 MR. DIGHE: Did you go over the table which is at  
6 the end of Exhibit 609, which is items 1, 2 --

7 HEARING OFFICER CELLI: One through seven?

8 MR. DIGHE: Or just seven.

9 MS. FORD: Am I aware of it is the question?  
10 What's your question?

11 HEARING OFFICER CELLI: I'm going to object. I'm  
12 just going to say that none of these questions are  
13 appropriate for this panel.

14 MR. DIGHE: Okay.

15 HEARING OFFICER CELLI: Some of them might be  
16 relevant to alternatives, which is the subject we're  
17 taking after socioeconomics.

18 MR. DIGHE: Well, the item 1 which is sensitive  
19 receptors, so there are schools. I was trying to  
20 understand. And they never drove past. So they are not  
21 done any study on the schools and socioeconomic effects on  
22 the schools of Mountain House.

23 HEARING OFFICER CELLI: I'm going to guarantee  
24 the answer is no, but let's hear.

25 MS. FORD: Can I hear the question again, please?

1 HEARING OFFICER CELLI: Did you do any study of  
2 the elementary schools or the schools in Mountain House?

3 MS. FORD: Yes.

4 HEARING OFFICER CELLI: Could you tell us what  
5 that analysis was, please?

6 STAFF COUNSEL WILLIS: Mr. Celli, just to  
7 clarify, number one is on GHG emissions, not just in  
8 general. They look at elementary schools as part of their  
9 socioeconomic studies. They don't necessarily look at GHG  
10 emissions in socioeconomics.

11 MR. DIGHE: Was school supervisors contacted and  
12 did you actually reach out --

13 HEARING OFFICER CELLI: Let them answer what the  
14 analysis was with regard to the schools in Mountain House.

15 MS. FORD: Under the CEQA environmental checklist  
16 form, we analyzed public services. And one of those is  
17 schools. And -- give me just a moment, please. Page  
18 4.8-8, analyze education. And I talked about the Mountain  
19 House elementary school district, also the Tracy Unified  
20 School District. In my analysis, I found there to be no  
21 impact that with operational employees there would be 2.74  
22 person household. And --

23 HEARING OFFICER CELLI: So your analysis is that  
24 the MEP would have no impact on schools with regard to  
25 having to educate the children --

1 MS. STENNICK: That's correct. It's based on the  
2 potential influx of construction and operation workers.  
3 And there would be little to know people moving to the  
4 area because of the robust workforce within the three,  
5 four county area.

6 HEARING OFFICER CELLI: So that's the extent of  
7 the analysis.

8 MR. DIGHE: Would you agree that Mountain House  
9 is a minority community?

10 MS. STENNICK: From the evidence that was  
11 provided to us, it appears that there is a diverse racial  
12 and ethnic population in Mountain House.

13 MR. DIGHE: Again, so you agree that Mountain  
14 House is a minority community, yes?

15 MR. WHEATLAND: Objection. Asked and answered.

16 HEARING OFFICER CELLI: No. Not answered.  
17 Nonresponsive.

18 MR. WHEATLAND: I object that he's vague with his  
19 respect to his definition of minority community.

20 HEARING OFFICER CELLI: Overruled. I think  
21 that's a fair question. And the question is do you think  
22 that Mountain House is a minority community? And it's a  
23 yes or no.

24 HEARING OFFICER CELLI: There you go. Next  
25 question.

1 MR. DIGHE: Do you use the Census 2000 data to --

2 MR. WHEATLAND: Objection. Asked and answered.

3 HEARING OFFICER CELLI: Sustained.

4 MR. DIGHE: Okay. Thank you.

5 So how many people in Mountain House were  
6 verbally or through e-mails were contacted and regarding  
7 socioeconomic effect on Mountain House?

8 MR. WHEATLAND: Objection. Relevance.

9 HEARING OFFICER CELLI: Where are you going with  
10 this, Mr. Dighe?

11 MR. DIGHE: I'm going around to when they did the  
12 socioeconomic study how much outreach was done. I'm  
13 trying to get to the outreach ballpark.

14 HEARING OFFICER CELLI: That evidence is in the  
15 record. Mr. Hoffman talked about all of these workshops,  
16 informational hearings.

17 MR. DIGHE: So I'll ask a question about the  
18 workshops. How many workshops were -- how many workshops  
19 actually happen in Mountain House?

20 MR. WHEATLAND: Objection. Relevance.

21 HEARING OFFICER CELLI: Yeah. Where are you  
22 going with this? What's the point? What's the point that  
23 you wish to establish?

24 MR. DIGHE: I wish to establish that outreach was  
25 minimal.

1 HEARING OFFICER CELLI: That was minimal?

2 MR. DIGHE: Yeah. Because there were seven  
3 public workshops and I asked the workshop which was  
4 denied. So I'm trying to understand where this is all  
5 coming --

6 MR. WHEATLAND: Hearing Officer Celli, if I may,  
7 the public of workshops that this Commission has conducted  
8 is a matter of public record. And Mr. Dighe's opinion as  
9 to whether that's sufficient or minimal is just  
10 argumentative.

11 HEARING OFFICER CELLI: It is an argument that  
12 you put in your brief. But we've already got the facts in  
13 evidence. So you're not going to develop that there were  
14 any more or any less than we've already heard. So the  
15 objection is sustained with regard to relevance of the  
16 outreach. If you can just get to the next question.

17 MR. DIGHE: Are you aware there's --

18 HEARING OFFICER CELLI: Did you have any more  
19 questions, Mr. Dighe? So the answer is?

20 MR. DIGHE: No.

21 HEARING OFFICER CELLI: No further questions.

22 Mr. Wilson, did you have any questions? Go  
23 ahead.

24 MR. WILSON: Mine are under cumulative impacts.  
25 Was there consideration of the east Altamont power plant



1 which is licensed but hasn't been constructed?

2 MR. HOFFMAN: That was handled in individual  
3 sections. And that was part of the cumulative analysis.

4 HEARING OFFICER CELLI: Right. But there's no  
5 such cumulative analysis in socioeconomics; correct?

6 MS. STENNICK: The cumulative analysis in  
7 socioeconomics again we have --

8 HEARING OFFICER CELLI: Did it consider the east  
9 Altamont?

10 MS. STENNICK: We considered the workforce. We  
11 considered the construction workforces for any large  
12 industrial projects, including power plants. We take a  
13 look at operational workforces and consider the cumulative  
14 impacts of those workforces on public schools, housing,  
15 police, fire services, that's the extent of our cumulative  
16 analysis.

17 HEARING OFFICER CELLI: Did it include the east  
18 Altamont?

19 MS. STENNICK: Yes. We did.

20 HEARING OFFICER CELLI: There you go.

21 MR. WILSON: Did you include the expansion of the  
22 Byron Airport and the expansion of runway 30?

23 HEARING OFFICER CELLI: Did the cumulative  
24 analysis I guess you're asking, Mr. Wilson, did the  
25 cumulative analysis include the expansion of Byron

1 Airport?

2 MS. STENNICK: No.

3 MR. WILSON: That's all I have, thank you.

4 HEARING OFFICER CELLI: Thank you.

5 Mr. Singh.

6 MR. SINGH: Could we request for a break?

7 Because my bladder is full, but I need to hear everything.

8 I request we can have a lunch break and everything will be  
9 done.

10 HEARING OFFICER CELLI: We're off the record for  
11 a moment.

12 (Off record.)

13 HEARING OFFICER CELLI: Mr. Singh, you've  
14 persuaded us to take a break.

15 So what we're going to do is we will take a half  
16 an hour lunch break. It's 12:42. I'm going to ask  
17 everybody to be back in your seat ready to go. We will  
18 start with cross-examination with Mr. Singh at 1:15.

19 Mr. Wheatland, you had a question?

20 MR. WHEATLAND: Yes, just before we break, could  
21 we ask the remaining parties to provide the Committee an  
22 estimate of their cross for staff either in terms of the  
23 number of questions or the number of minutes?

24 HEARING OFFICER CELLI: We can have the parties  
25 do that informally off the record. And then I think you

1 can report back to us on that. And there was some other  
2 question back here, Mr. Simpson.

3 MR. SIMPSON: I think they turned off the  
4 ventilation because it was too noisy while we were in  
5 here. Maybe they could turn it on while we're gone.

6 HEARING OFFICER CELLI: Okay. Maybe I'm feeling  
7 that.

8 MR. SIMPSON: Yeah, you got a fan.

9 HEARING OFFICER CELLI: I'll look into that.  
10 Okay. I'll see you all at 1:15.

11 (Whereupon a lunch recess was taken  
12 at 12:45 p.m.)

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1 AFTERNOON SESSION

2 1:26 P.M.

3 HEARING OFFICER CELLI: The question, the panel  
4 is back. You're still under oath, and Mr. Singh, the  
5 questions are with Mr. Singh. So go ahead, Mr. Singh.

6 MR. SINGH: Mr. Hoffman, you mentioned that there  
7 was a survey of Mountain House survey being conducted. Do  
8 you know who provided those survey to you?

9 MR. HOFFMAN: I picked it off the website.

10 MR. SINGH: Website of which one?

11 MR. HOFFMAN: The Mountain House Community  
12 Services District.

13 MR. SINGH: And it has all these 78 percent  
14 college higher, 63 percent above \$100,000 for salaries?

15 MR. HOFFMAN: Yes.

16 MR. SINGH: All these -- okay.

17 HEARING OFFICER CELLI: Is this an exhibit that  
18 we're talking about now that you put in?

19 MR. SINGH: Well I mention it so I thought I  
20 could ask him. But there is no exhibit. Is that -- am I  
21 correct on this? Is it a report or exhibit because I was  
22 looking and couldn't find it.

23 STAFF COUNSEL WILLIS: It's referenced in the  
24 socioeconomics section.

25 HEARING OFFICER CELLI: It's in the FSA.

1           STAFF COUNSEL WILLIS: But it's not a specific  
2 exhibit.

3           HEARING OFFICER CELLI: Okay. But that table is  
4 in the FSA?

5           STAFF COUNSEL WILLIS: It was referenced.

6           MR. HOFFMAN: It's information that's been  
7 disconnected and on our website. The transaction number  
8 is 59187. It was actually quoted within our staff  
9 assessment -- supplemental staff assessment.

10          HEARING OFFICER CELLI: Okay.

11          MR. SINGH: Coming back to (inaudible) was any  
12 job assessment of analysis being done?

13          STAFF COUNSEL WILLIS: Objection or  
14 clarification. It's vague. If he can be specific.

15          MR. SINGH: This is specific to socioeconomic,  
16 because one of the facts that we established it will  
17 create the jobs within the community or in the area.

18          HEARING OFFICER CELLI: So there is an analysis  
19 done of what kind of jobs are needed for the Mariposa  
20 Energy Project.

21          MR. SINGH: That's right. But that was done by  
22 the applicant. But I'm trying to hear from the staff.

23          HEARING OFFICER CELLI: If they did a separate  
24 analysis of the numbers of construction workers, et  
25 cetera, needed for Mariposa.

1 MS. FORD: Yes, we did.

2 HEARING OFFICER CELLI: There you go.

3 MR. SINGH: Can you tell me like how many  
4 construction workers would be needed to build this power  
5 plant?

6 MS. FORD: The average number of workers on site  
7 for the 14 month period of construction would be 90. And  
8 the project would require eight full time employees.

9 MR. SINGH: Full time employees thereafter?  
10 After the construction is done?

11 MS. FORD: Eight full time employees.

12 MR. SINGH: So basically there would be only a  
13 job for 14 months. And was any analysis how many  
14 construction workers are there in Mountain House?

15 MS. FORD: No.

16 MR. SINGH: So can I assume the fact that there  
17 will not be any job creation for Mountain House?

18 STAFF COUNSEL WILLIS: Objection.

19 HEARING OFFICER CELLI: Overruled. The question  
20 is can he assume that there would be no job creation for  
21 Mountain House arriving, I take it, from the Mariposa  
22 project. You know, I have to say, isn't this dependent on  
23 whether somebody at Mariposa -- somebody applies for  
24 Mountain House for a job at Mariposa and somebody at  
25 Mariposa hires that person or not?

1 MS. STENNICK: That would be correct.

2 HEARING OFFICER CELLI: So it's --

3 MR. SINGH: But if the talent is not there to do  
4 the construction because most of the figures from Mountain  
5 House community survey it states that people are 63  
6 percent, 78 percent college graduate so that the  
7 possibility of having construction worker is almost not  
8 there.

9 MS. STENNICK: That could be good news.

10 MR. SINGH: So there is no job for Mountain House  
11 any way.

12 Do you agree this power plant can be run by only  
13 two people and it's a facility anybody from their home  
14 having a laptop can turn on and turn off this power plant?

15 MR. WHEATLAND: Objection. Relevance.

16 HEARING OFFICER CELLI: Well, actually, it may or  
17 may not be relevant, but I'm not sure these witnesses are  
18 the people who need to answer that question because I'm  
19 not sure they analyzed exactly what the people during the  
20 operations phrase will actually be doing and where they're  
21 located and that sort of thing.

22 MR. SINGH: I'm trying to establish the fact that  
23 these type of facility, it is totally auto treatment,  
24 which can be turned on and turned off by the laptop by two  
25 people working. So --

1 HEARING OFFICER CELLI: I'm not sure -- is that  
2 in the record somewhere?

3 MR. WHEATLAND: That's not in the record.

4 HEARING OFFICER CELLI: Okay. The objection  
5 would be sustained.

6 MR. SINGH: I'm trying to check with him if that  
7 is in his exhibits.

8 HEARING OFFICER CELLI: Okay.

9 MR. SINGH: Now, if the growth of the community  
10 and what percentage of growth of the community and the  
11 displacement of the community because of the power plant  
12 is one of the factor in EJ or Executive Orders --

13 MS. FORD: I don't believe I understand the  
14 question.

15 HEARING OFFICER CELLI: Can you ask it a  
16 different way, Mr. Singh? Is the displacement of a  
17 community a factor in considering the EJ --

18 MR. SINGH: Yeah or executive orders by the  
19 President that the power plant if it impacts the  
20 displacement of the community not growth of the community  
21 is it part of the environmental justice or racial  
22 minority?

23 HEARING OFFICER CELLI: Is that part of the  
24 analysis of the EJ whether the presents of the power plant  
25 would --



1 MR. SINGH: Displace the community --

2 HEARING OFFICER CELLI: Displace the community.

3 MR. SINGH: Or impact the growth of the  
4 community.

5 HEARING OFFICER CELLI: Or impact the growth of  
6 the community.

7 MS. STENNICK: That was -- no. However, that was  
8 analyzed under CEQA. We took a look at whether or not the  
9 power plant would induce population growth or disrupt the  
10 community. And by the term community, we're not referring  
11 to Mountain House in itself. We're referring to the  
12 vicinity of the project and any communities that will be  
13 in approximate distance to the project.

14 HEARING OFFICER CELLI: Okay.

15 MR. SINGH: What is the limit for the low income  
16 group?

17 MS. STENNICK: Are you referring to the  
18 thresholds for environmental justice, the minority I  
19 believe is 50 percent. Is that what you're referring to?

20 MR. SINGH: Right. Right.

21 MS. STENNICK: There is no threshold for poverty  
22 that was ever identified in the NEPA guidelines for  
23 environmental justice nor were they identified in the  
24 counsel on environmental quality and environmental  
25 justice.

1           MR. SINGH: But as an expert witness, do you know  
2 what is the limit of the low income group? How much  
3 household should certain 30,000, 40,000?

4           HEARING OFFICER CELLI: So you're asking at what  
5 amount of earnings does a household qualify below which a  
6 household would qualify as a low income household? Is  
7 that --

8           MR. SINGH: Yes.

9           HEARING OFFICER CELLI: -- the question. There  
10 you go.

11          MS. STENNICK: Well, those numbers change over  
12 the years. I believe -- let's see. 2000 Census -- the  
13 national poverty thresh holds for income -- let's see, a  
14 family of four would be \$17,029. A family of five would  
15 be \$20,000. And they're adjusted over the years.

16          MR. SINGH: So in recent data you have for last  
17 two to three years --

18          MS. STENNICK: I don't have that information with  
19 me.

20          MR. SINGH: Do you think like as a expert  
21 witnesses on EJ you should have those numbers?

22          MR. WHEATLAND: Objection. Argumentative.

23          HEARING OFFICER CELLI: Sustained. In other  
24 words, that's something that you can argue later if you  
25 wish in your brief.

1 MR. SINGH: All right.

2 Do you know any top vendors for supplying the  
3 cement and the gravel in that area that can be used for  
4 constructing this power plant?

5 MS. STENNICK: Could you repeat the question? I  
6 wasn't sure what you said.

7 MR. SINGH: In one of the EJ was that new jobs  
8 would be created. There would be suppliers who would  
9 supply the cement as well as the gravel to build the power  
10 plant. So have you done any analysis of how much amount  
11 of purchase will happen on cement and gravel to build this  
12 power plant and will it be Alameda County, most gravel and  
13 cement suppliers are there or if it is in some different  
14 county.

15 HEARING OFFICER CELLI: So that's several  
16 questions right there. But the question is: Is there any  
17 analysis done as to where materials such as cement, would  
18 be purchased for the project?

19 MS. STENNICK: No.

20 HEARING OFFICER CELLI: Okay. There's your  
21 answer. Since there's no analysis, we're not going to  
22 know whether it's Alameda County, San Joaquin, Contra  
23 Costa or whichever.

24 MR. SINGH: Is this the burden of applicant to  
25 justify EJ or racial minority or it's a burden of staff to

1 protect racial minorities?

2 HEARING OFFICER CELLI: You understand the  
3 question? It's actually a legal question I think.

4 STAFF COUNSEL WILLIS: I'm not quite sure I'm  
5 understanding what the burden --

6 HEARING OFFICER CELLI: The burden is on the  
7 applicant throughout these proceedings, unless there is a  
8 challenge to a condition of certification or modification  
9 request. The burden is always with the applicant. And  
10 the burden to justify -- had the way you couched it, Mr.  
11 Singh, you said the burden to justify something having to  
12 do with the EJ community.

13 MR. SINGH: Yeah. So basically when I took into  
14 the CEC website, so there are federal laws, guidelines and  
15 procedures, CA laws, guidelines and policies, and are  
16 these being driven by CEC or the applicant? Or applicant  
17 owes the burden to justify on these two.

18 MR. WHEATLAND: We'll stipulate the applicant has  
19 the burden of proof to demonstrate compliance with all  
20 applicable laws.

21 HEARING OFFICER CELLI: That's an accurate  
22 statement from him.

23 MR. SINGH: You mentioned that there were seven  
24 different workshops or different events that were  
25 conducted in Mountain House for the outreach program. Is

1 that correct?

2 MR. HOFFMAN: Yes, I did.

3 MR. SINGH: Do you have the dates or because I  
4 was looking at the document and couldn't find out the  
5 dates when those outreach programs were made.

6 MR. WHEATLAND: Objection. That's a matter of  
7 record.

8 HEARING OFFICER CELLI: It is. We really don't  
9 need to take up time today. We know the seven workshops  
10 took place. And you can find that information on the  
11 website.

12 MR. SINGH: Right. Because the reason is because  
13 we requested for second workshop and that was denied  
14 within Mountain House community. So I was trying to  
15 establish some record.

16 HEARING OFFICER CELLI: You know what? That  
17 request, whether it's relevant or not, is also part of the  
18 record.

19 MR. SINGH: As a part of racial minority or EJ,  
20 does environmental and physical -- can you elaborate the  
21 physical conditions that you have done the analysis?

22 MR. WHEATLAND: Hearing Officer Celli, I want to  
23 pose an objection here. He's asking the exact same  
24 questions of the applicant that he's asking of staff. And  
25 I just don't see the point of this endless recitation of

1 the exact same questions. Could we ask the staff if  
2 disagreed with anything the applicant testified to as  
3 opposed to going over each and every question again?

4 HEARING OFFICER CELLI: Yes. Except let me ask  
5 you this, Mr. Singh. There was a word that you said and I  
6 didn't understand it. Read your question, please.

7 MR. SINGH: So there are two types of analysis  
8 being done. One is environmental impact and one is a  
9 physical impact. So I'm trying to assess -- I understand  
10 that applicant has done that. But I want to hear from the  
11 staff whether they have done those type of analysis or  
12 just relied on applicant's data and they say, yes. Okay,  
13 we got we don't need to conduct any analysis for the --

14 HEARING OFFICER CELLI: That's a fair question.

15 STAFF COUNSEL WILLIS: I'm going to object as  
16 vague. Because I mean, just to focus back on the section  
17 that we're on socioeconomics.

18 HEARING OFFICER CELLI: Correct. But the  
19 testimony is that there is a physical, there is an  
20 environmental impact.

21 STAFF COUNSEL WILLIS: If he's asking just about  
22 socioeconomics but not the whole broad --

23 HEARING OFFICER CELLI: Correct. So his question  
24 is did staff do an independent analysis apart from that of  
25 the applicant.

1           MR. HOFFMAN: Staff did do a complete and  
2 thorough independent analysis on this project in 22  
3 technical sections. And in those 22 sections, that  
4 project would not have a significant impact on the  
5 environment.

6           HEARING OFFICER CELLI: And that's pretty much  
7 the bottom line of socioeconomics.

8           MR. SINGH: So any of those 22 points that you  
9 disagree with the applicant --

10          HEARING OFFICER CELLI: Did you disagree with the  
11 applicants on any of those 22 areas that you analyzed the  
12 EJ impacts?

13          MR. HOFFMAN: I don't know that staff is looking  
14 to a great --

15          STAFF COUNSEL WILLIS: Excuse me just a moment.  
16 I'm going to object. Staff did not say they did an EJ  
17 analysis in each section. They said they an environmental  
18 analysis in each section because they already determined  
19 there was not an environmental justice community. But  
20 they did look at the impacts in each section of the  
21 project on the whole area, but not necessarily  
22 environmental justice. Otherwise, you'd see a statement  
23 in each section to identify that.

24          HEARING OFFICER CELLI: Okay.

25          MR. SINGH: So basically they haven't done the EJ

1 analysis, right?

2 STAFF COUNSEL WILLIS: I'm going to object.

3 Argumentative.

4 MR. SINGH: Yes or no if I can ask.

5 HEARING OFFICER CELLI: I think that's a fair  
6 question. He was trying to determine whether there was an  
7 environmental analysis done and Mr. Hoffman said there was  
8 an environmental analysis done -- don't let me put words  
9 in your mouth. But I thought you said there was an  
10 environmental analysis done in 22 sections and in each of  
11 those sections there was a finding of no impact.

12 And the next question was is there -- was there  
13 any disagreement with the applicant in any of those 22  
14 sections. And that's what whence came the objection. But  
15 I thought it was a fair question: Did they disagree with  
16 the applicant on any of the analyses having to do with EJ.  
17 In other words --

18 MR. HOFFMAN: Staff doesn't look to agree or  
19 disagree with the applicant. We do our own analysis and  
20 that's what we rest on. I don't know that we go into a  
21 project hoping to agree or disagree. There's not our  
22 role.

23 HEARING OFFICER CELLI: All right. Mr. Singh,  
24 may be -- let me just ask this question. Applicant did an  
25 analysis as to whether there were any impacts to an EJ



1 community; isn't that correct? I need a yes or no on the  
2 record for that.

3 MR. HOFFMAN: Yes.

4 HEARING OFFICER CELLI: Okay. Staff did a  
5 similar analysis to determine whether there was any EJ  
6 impacts -- or any impacts to an EJ community; isn't that  
7 correct? Did staff's analysis agree or disagree with the  
8 applicant's analysis?

9 MR. HOFFMAN: It would agree.

10 HEARING OFFICER CELLI: Okay. That was where we  
11 started. So Mr. Singh, take it from there.

12 MR. SINGH: Okay. So you agree with all the 22  
13 finds and your analysis is exactly same or who applicant  
14 has provided? So didn't find any disagreement on  
15 applicant's -- so let me rephrase it. So it did not find  
16 disagreement with the applicant analysis and what analysis  
17 you conducted or the staff conduct?

18 HEARING OFFICER CELLI: They just said that.  
19 That's now in the record.

20 MR. SINGH: That's it for my questions. Thank  
21 you.

22 HEARING OFFICER CELLI: Thank you, Mr. Singh.  
23 Sierra Club, please.

24 MR. CARLTON: No questions.

25 HEARING OFFICER CELLI: Thank you.

1 Simpson, please.

2 MR. SIMPSON: To kind of pick up where you left  
3 off with the last questioning --

4 HEARING OFFICER CELLI: Can I ask you to speak a  
5 little closer into your mikes so you can feel it  
6 amplified.

7 MR. SIMPSON: Sure.

8 HEARING OFFICER CELLI: Thanks.

9 MR. SIMPSON: So you didn't find an environmental  
10 justice community; is that correct?

11 MS. STENNICK: That's correct. I would agree  
12 that Mountain House is a racially diverse community, but I  
13 would not stipulate it is an environmental justice nor is  
14 it a minority.

15 MR. SIMPSON: Is it therefore impossible to find  
16 an impacts on environmental justice community if you  
17 didn't find an environmental justice community?

18 MS. STENNICK: It's a double negative. If there  
19 is no EJ community, could we find an impact on an EJ  
20 community? The analysis -- and I'm speaking strictly for  
21 the socioeconomics section. We did not find any impact to  
22 socioeconomics resources on any population, including an  
23 environmental justice population.

24 MR. SIMPSON: Would it be possible to find an  
25 impact on an environmental justice community if you did

1 not find an environmental justice community?

2 MS. STENNICK: That question seems to answer  
3 itself.

4 HEARING OFFICER CELLI: Agreed. Objection is  
5 sustained. I could see she was warming up, but she didn't  
6 have her mike on so I just --

7 MR. SIMPSON: I see.

8 If I understood correctly the steps for  
9 environmental justice analysis are first to identify where  
10 the impact of the project is and then identify if there is  
11 an environmental justice population in that impact area  
12 and then to determine if there is a significant impact to  
13 that community.

14 MS. STENNICK: That's accurate.

15 MR. SIMPSON: So can you just skip to number  
16 three and determine if there is a significant impact or is  
17 there a reason to do number one and two first?

18 MS. STENNICK: Well, there is a reason to do  
19 number one and number two first. There is a reason to do  
20 all three of them. If you have -- you need to establish  
21 an area of potential impact from the project and then take  
22 a look at whether or not there is an environmental justice  
23 population within the area of potential impact. And then  
24 you need to do an analysis of the project's impacts to  
25 determine whether those impacts would effect

1 disproportionately, significantly, adversely effect a  
2 minority population or low income or minority population.

3 MR. SIMPSON: We've been over that.

4 HEARING OFFICER CELLI: Okay. Next question.

5 MR. SIMPSON: So you already identified the same  
6 steps you identified before and I reiterated and you just  
7 mentioned again, but you didn't actually tell me if there  
8 is a reason for this order in the steps.

9 MS. STENNICK: I really don't know how to answer  
10 your question. I don't understand the question.

11 HEARING OFFICER CELLI: May I ask, is it  
12 statutory? Is it by code? Is it by reg? What makes --

13 MS. STENNICK: No. Excuse me. In the counsel on  
14 environmental quality guidelines on the NEPA guidelines  
15 for environmental justice, there is no set direction to  
16 federal agencies or State agencies on how to conduct an  
17 environmental justice analysis. There are guidelines that  
18 each agency can fashion to best suit their own either  
19 regulatory program needs or the permitting needs.

20 HEARING OFFICER CELLI: Okay. I think you're  
21 on to something here. Go ahead, Mr. Simpson.

22 MR. SIMPSON: So under the CEC's construction of  
23 an environmental justice analysis, can you just skip to  
24 step three and if there's no significant impact on the  
25 rest of the community determine that there's no impact on

1 environmental justice community?

2 MS. STENNICK: I guess I'm not understanding what  
3 you mean by just skip. There is no skipping in the  
4 analysis that we did for socioeconomic resources. We did  
5 an analysis based on the CEQA checklist and it's been  
6 established in the record what exactly we did to take a  
7 look at the impacts.

8 MR. SIMPSON: Well, I think it's established that  
9 some intervenors considered there is a flaw in the process  
10 that looks at 2000 numbers to establish if there is an  
11 environmental justice community or not. Well, let me make  
12 it a question. Does the Mountain House Community Services  
13 District warrant deference? Do you give deference to  
14 their position?

15 MR. WHEATLAND: Objection. Vague. Their  
16 position on what? They haven't stated a position in that  
17 proceeding. Their pre-hearing conference statement said  
18 they had no position on any of the issues relevant to this  
19 proceeding.

20 HEARING OFFICER CELLI: Can you ask it with more  
21 specificity perhaps?

22 MR. SIMPSON: I can try. You received different  
23 numbers from the 2000 Census, the 9,930 residents of  
24 Mountain House. Where do you receive that information  
25 from?

1 MS. STENNICK: Craig indicated he got that from  
2 the Mountain House Community Services District website.

3 MR. SIMPSON: I see. So would that position  
4 deserve deference in your opinion?

5 MS. STENNICK: We included that. We discussed  
6 that in our supplemental staff assessment.

7 MR. SIMPSON: Is that yes or no?

8 MS. STENNICK: That's a yes.

9 MR. SIMPSON: Good. Do you know what this  
10 precautionary principle is?

11 MS. STENNICK: Yes. I've heard of the  
12 precautionary principle. It's been around for probably  
13 ten or so years I believe. The city of San Francisco is  
14 probably the first city in California that has adopted the  
15 precautionary principle.

16 MR. SIMPSON: In your school analysis, do you  
17 know how many kids are in school in Mountain House?

18 MS. STENNICK: For the 42 students.

19 MR. SIMPSON: There are 42 students in Mountain  
20 House?

21 MS. STENNICK: For 2008/2009 school year.

22 MR. SIMPSON: Thank you. I'm happy with that  
23 answer.

24 HEARING OFFICER CELLI: You know what, I'm not  
25 sure the Committee is though. That doesn't sound right.

1           MR. WHEATLAND: Can we get clarification on that?  
2 I think the witness is referencing the Mountain House  
3 school.

4           MR. GROOVER: There is a Mountain House school as  
5 opposed to the Lammersville School District has three  
6 schools in Mountain House.

7           HEARING OFFICER CELLI: And the Mountain House  
8 school only has 48 students?

9           MR. GROOVER: It's a rural agricultural school.

10          MR. LAMB: That's the Alameda County side.  
11 That's not Lammersville. We have about 750 students.

12          MR. WHEATLAND: One of the really confusing  
13 things here is there is a Mountain House community in  
14 Alameda County. There is a Mountain House community in  
15 San Joaquin County, and a lot of the questions bore that  
16 distinction.

17          HEARING OFFICER CELLI: Okay. Well, then, Mr.  
18 Simpson, I'll let you clear that all up.

19          MR. SIMPSON: I was happy with the answer.

20          Did your analysis consider how many students are  
21 in the Mountain House Community Services District?

22          MS. FORD: Yes.

23          MR. SIMPSON: 42 students?

24          MS. FORD: That would be specific to just that  
25 school, not the district. You're asking about the

1 district specific?

2 MR. SIMPSON: Yes.

3 MS. FORD: Yes.

4 MR. SIMPSON: How many students are in the  
5 district?

6 MS. FORD: For the same school year, 17,322.

7 MR. SIMPSON: Okay. All right. If you had  
8 identified an environmental justice community, how would  
9 your analysis have been different?

10 HEARING OFFICER CELLI: That's a reasonable  
11 hypothetical.

12 MS. STENNICK: Our analysis, we would have  
13 conducted the same analysis to determine whether or not  
14 there were any socioeconomics impacts to schools, housing,  
15 public facilities. This is strictly speaking for  
16 socioeconomics. We would take a look at the demographic  
17 screening analysis to determine if any of those impacts  
18 may be disproportionately impacted or effected by a  
19 minority population.

20 MR. HOFFMAN: If I could carry on. To the  
21 individual technical sections, the difference you would  
22 have seen would be a separate heading with the title  
23 environmental justice in each individual section would  
24 have done their analysis and difference of impacts between  
25 those that took place from the minority population versus



1 the overall population.

2 HEARING OFFICER CELLI: And for the record, I  
3 just want -- I'm speaking too closely. Can you hear me  
4 okay?

5 I want to just say for the people on the  
6 telephone that the witnesses are Craig Hoffman, Amanda  
7 Stennick, and Kristen Ford. And Craig, you don't need to  
8 identify yourself, but Amanda and Kristen, if you could  
9 before you speak just say who you are for the people on  
10 the telephone.

11 Go ahead, Ms. Stennick.

12 MS. STENNICK: Amanda Stennick. I also want to  
13 indicate that if impacts if significant adverse impacts  
14 are identified, staff would look to find local mitigation.  
15 In other words, as best as possible, to mitigate that  
16 particular impact.

17 MR. SIMPSON: So these are the things that didn't  
18 occur because you didn't find an environmental justice  
19 community? Is that a reasonable way to say it?

20 MS. STENNICK: The same analysis occurred in the  
21 socioeconomic section.

22 MR. SIMPSON: Mr. Hoffman, you mentioned there  
23 would be a whole other section.

24 MR. HOFFMAN: I wouldn't say a whole other  
25 section. You would see a subheading in each of the

1 individual technical sections. We would have analyzed if  
2 there were environmental justice communities.

3 MR. SIMPSON: So there wouldn't be another  
4 environmental justice section?

5 MR. HOFFMAN: Not a stand alone section.

6 MR. SIMPSON: I see. And would you be qualified  
7 to analyze that?

8 MR. HOFFMAN: It would be analyzed in each  
9 individual technical section. They would analyze the  
10 impacts.

11 MR. SIMPSON: Can one of you point to a public  
12 notice that includes any information on the air quality  
13 effects of the project?

14 MR. WHEATLAND: Objection. This is beyond the  
15 scope of their testimony.

16 HEARING OFFICER CELLI: Sustained.

17 MR. SIMPSON: Would the outreach have been  
18 different if there was an environmental justice community?

19 MR. HOFFMAN: I think we did a very thorough  
20 outreach for the existing community and existing area. If  
21 you're asking would there have been additional workshops  
22 or existing notices, I don't believe so.

23 MR. SIMPSON: Would they have been in other  
24 languages, perhaps?

25 MR. WHEATLAND: Objection. This goes beyond the

1 scope of these witness's testimony.

2 HEARING OFFICER CELLI: Overruled. I think this  
3 is relevant and I think it's within the scope.

4 STAFF COUNSEL WILLIS: I'm going to object it  
5 calls for speculation. We're assuming there is a language  
6 barrier.

7 HEARING OFFICER CELLI: That's true, but he's  
8 asking a hypothetical question and I think this expert can  
9 answer this hypothetical and we'll move on.

10 MR. HOFFMAN: Hypothetically, I think I probably  
11 would have worked closer with a public adviser to identify  
12 those sectors that needed may be some additional outreach.  
13 And we do have public adviser and Jennifer is here who's  
14 active in every project. And we do the best we can to  
15 provide the outreach to the communities that every project  
16 (inaudible).

17 MR. SIMPSON: So are you saying that if the  
18 outreach was in adequate it's the public adviser's fault.

19 MR. WHEATLAND: Objection. Argumentative.

20 HEARING OFFICER CELLI: Sustained.

21 MR. SIMPSON: Is the Commission subject to the  
22 Brown Act?

23 MR. WHEATLAND: Objection. Beyond the scope of  
24 this witness's testimony.

25 MR. SIMPSON: You identified the outreach, the

1 notices, the workshops that were conduct in the community.  
2 Can you tell me a little about how the notices were  
3 delivered to the community?

4 MR. HOFFMAN: They are mailed. For the  
5 individual notices, usually there's three components of  
6 them. You get a mailing list that is comprised of the  
7 surrounding property owners that are within 1,000 feet of  
8 the power plant, 500 feet of any laterals. And then you  
9 have a mailing lift of all agencies and interested parties  
10 again, the Mountain House Community Service District was  
11 part of that mailing list: San Joaquin County, Contra  
12 Costa County, Alameda County. Then you have a list of --  
13 you have a list of public libraries as well that get  
14 mailed the notice. In this case, you send out your first  
15 notices when the ASC comes in and that mailing list is --  
16 it's consistently improved upon as we go to public  
17 meetings, people asked to be on our list server. We have  
18 notices that are going online. Typically, you're going to  
19 see a notice it gets mailed and it's also put online.

20 MR. SIMPSON: It gets mailed if you're within  
21 1,000 feet of the --

22 MR. HOFFMAN: And if you're somebody that's asked  
23 to receive notices.

24 MR. SIMPSON: So is it within 1,000 feet of the  
25 parallel infrastructure substantial or the site?

1           MR. HOFFMAN: In this case, looking at the AFC,  
2 it was where the project is within the project boundaries.

3           MR. SIMPSON: The site?

4           MR. HOFFMAN: Yes.

5           MR. SIMPSON: So within 1,000 feet of the site.

6           MR. HOFFMAN: Yes.

7           MR. SIMPSON: Which wouldn't leave the parcel?

8           MR. HOFFMAN: It left the parcel.

9           MR. SIMPSON: I see. All right. Does Mountain  
10 House have a library?

11          MR. WHEATLAND: Objection. Relevance.

12          Hearing Officer Celli, I'd like to interpose an  
13 objection here. Mr. Simpson is going back over a lot of  
14 ground about the early noticing of this project. When he  
15 was granted intervenor status, the Committee was very  
16 explicit that his status as intervenor, he had to come  
17 into the project as he found it. What he's doing is going  
18 back over ground over a period of time for which he was  
19 not a party. And we believe this line of questioning  
20 exceeds his authority as an intervenor. You've carefully  
21 limited his authority to the time at which he became a  
22 party.

23          HEARING OFFICER CELLI: The question though is  
24 there a library -- you asked was there a library.

25          MR. SIMPSON: Yeah. He said the notice was

1 posted at libraries. Nothing else he said indicated there  
2 was any notice posted or sent in Mountain House except  
3 maybe if there was a library.

4 STAFF COUNSEL WILLIS: I'm going to object. He  
5 did say that it was sent out to the various agencies and  
6 Mountain House would have been part of that.

7 MR. SIMPSON: I understand the Mountain House --

8 HEARING OFFICER CELLI: So where are we going  
9 with this? Because I really don't want to spend a lot of  
10 time on the notice stuff.

11 MR. SIMPSON: Well, I think that notice to this  
12 community is a relevant factor and it's relevant to  
13 environmental justice considerations. If the contention  
14 is, oh, this thing has had all this public notice, it was  
15 at the library, if you happen to be within 1,000 feet of  
16 the site -- not the parcel, the site -- if you happen to  
17 be a government entity, then you receive notice. But if  
18 you're a community member in Mountain House and may speak  
19 a different language, I don't see any indication that  
20 there was notice sent or published in a fashion these  
21 people would see it and under Mr. Wheatland's construction  
22 I couldn't even ask questions about the staff assessment.  
23 That was before I got here, too.

24 HEARING OFFICER CELLI: I'm going to overrule the  
25 objection, but I want to cut to the chase. So let's just

1 get -- what's your objection?

2           STAFF COUNSEL WILLIS: My objection is he's  
3 talking about the -- they're talking about the very first  
4 notice to the very, very beginning of the process. And  
5 Mr. Simpson has been characterizing it as though no notice  
6 has ever gone out to anyone else past a authorize feet.  
7 That's not true. I think the record is really clear that  
8 we have had plenty of notice, workshops, and such that  
9 have been held in Mountain House and have been held here  
10 that have noticing has gone way beyond the original  
11 notices. So we need to move on past the original notice,  
12 because that's just a very beginning of the process to  
13 help identify who wants to participate.

14           MR. SIMPSON: I'm looking for any notice,  
15 original notice --

16           HEARING OFFICER CELLI: To Mountain House.

17           MR. SIMPSON: Yeah.

18           HEARING OFFICER CELLI: Let's quickly get through  
19 this.

20           Mr. Hoffman, can you tell us what notice Mountain  
21 House residents got?

22           MR. HOFFMAN: Well, it went to the Mountain House  
23 Branch Library at 579 Whicklund Crossing, Mountain House,  
24 California, 95391. A copy went to the Tracy Public  
25 Library. It went to the Livermore Public Library, the San

1 Joaquin County Library in Stockton, the Brentwood Library  
2 in Brentwood, and Fremont Main Library in Fremont.

3 Now, those are local libraries as well as we send  
4 them out to -- at the Energy Commission here in Sacramento  
5 we have a State Library in Sacramento, public libraries  
6 in --

7 HEARING OFFICER CELLI: He's specific interested  
8 in Mountain House.

9 MR. HOFFMAN: It went to Mountain House.

10 HEARING OFFICER CELLI: There you go. How's  
11 that, Mr. Simpson?

12 MR. SIMPSON: Okay. So the Mountain House  
13 library is how the community could have found out about  
14 the project?

15 MR. HOFFMAN: Well, and you have the Mountain  
16 House Community Service District as an intervenor.

17 MR. SIMPSON: So does that mean it was incumbent  
18 upon them to provide notice to their community?

19 MR. HOFFMAN: As part of the leadership for the  
20 group, I think the question keeps coming back the Mountain  
21 House community never, never had any type of notice about  
22 this project. And while we disagreed with that statement,  
23 is every single workshop that we've ever had that have  
24 been well received and well attended and the over 90  
25 public comments that we received on the last two



1 evidentiary hearings down in BBID, the Mountain House  
2 community has been very active in this proceeding, and  
3 they participated. They're active giving me calls,  
4 looking at our website. They have a blog. This is a  
5 technically savvy group of people, and they've been well  
6 participating in this process.

7 HEARING OFFICER CELLI: So now if we can get this  
8 back to wrapping up socioeconomics.

9 MR. SIMPSON: I've got a number of questions.

10 HEARING OFFICER CELLI: Well, get to them.

11 MR. SIMPSON: Thank you.

12 HEARING OFFICER CELLI: While we're still young.

13 MR. SIMPSON: Might be a little late for that for  
14 some of us.

15 Does socioeconomics consider alternatives or  
16 simply project, no project for the comparison of a project  
17 to no project?

18 MS. STENNICK: There is a stand alone section on  
19 alternatives, and it's not in the socioeconomics section.

20 MR. SIMPSON: Is this project a public facility?

21 STAFF COUNSEL WILLIS: I need to object.

22 HEARING OFFICER CELLI: Sustained. Relevance.  
23 What's the relevance?

24 MR. SIMPSON: The CEQA checklist has the question  
25 of if the project will have an effect on public

1 facilities.

2 HEARING OFFICER CELLI: Is that under land use?

3 MR. SIMPSON: No. It's in the socioeconomics.

4 HEARING OFFICER CELLI: I see. I understand what  
5 you're saying. I guess the question is what would the  
6 effect be on public -- so you're interested in what  
7 Mariposa's effect would have on public services in the  
8 area.

9 MR. SIMPSON: Well, the CEQA check lists -- my  
10 question is is this a public facility. And as pursuant a  
11 CEQA checklist about public facilities. I can look --

12 MS. STENNICK: The CEQA -- Amanda Stennick.

13 The CEQA checklist that we use in socioeconomics  
14 states "would the project result in substantial adverse  
15 fiscal impacts associated with (inaudible) of new or  
16 physically altered government facilities need for new or  
17 physically altered government facilities, the construction  
18 of which could cause significant environmental impacts in  
19 order to maintain acceptable service ratios, response  
20 times or other performance objectives for any of the  
21 public services." So I'm not clear on your question.

22 HEARING OFFICER CELLI: Yeah, I agree. The  
23 question really, it doesn't apply to socioeconomics as  
24 asked.

25 MR. SIMPSON: I see.

1 Does the project provide a public service?

2 HEARING OFFICER CELLI: I would sustain the same  
3 objection. It's the other way around. It's the project  
4 can have an impact on those things. It's not is the  
5 project one of those things, government services, et  
6 cetera. The project is not a government service. The  
7 question is can the project have an impact on government  
8 service.

9 MR. SIMPSON: I see. Do you know how much water  
10 the project will use?

11 MR. WHEATLAND: Objection.

12 STAFF COUNSEL WILLIS: Objection.

13 MR. WHEATLAND: Asked and answered.

14 HEARING OFFICER CELLI: Sustained. And also  
15 that's in the record in soil and water. We haven't even  
16 gotten to that yet.

17 MR. SIMPSON: Is the water used for this facility  
18 a public service?

19 STAFF COUNSEL WILLIS: Objection.

20 HEARING OFFICER CELLI: What's the objection?

21 STAFF COUNSEL WILLIS: Relevance to the  
22 socioeconomic section. We're talking about impacts on  
23 housing, jobs --

24 MR. SIMPSON: And if the project uses this  
25 government provided water and that cause an in the

1 criterias in the water rates or causes --

2 HEARING OFFICER CELLI: Or an impact of any sort  
3 from the water, it would be a soil and water impact. We  
4 haven't dealt with soil and water. And if there is an  
5 environmental justice minority, we would do some analysis  
6 I take it on whether the impact in soil and water would  
7 effect an EJ community.

8 So, really, all we're interested here in  
9 socioeconomics is the presence or absence of an EJ  
10 community, the impacts on socioeconomics. But those  
11 external impacts that you were describing like water  
12 impacts would be soil and water. Air impacts would be in  
13 air, et cetera.

14 MR. SIMPSON: Well, I think what I'm looking at  
15 is this socioeconomics table 2, which refers to public  
16 services and whether there will be an impact on public  
17 services. So if they suck up all the water there, there's  
18 no water for someone else.

19 HEARING OFFICER CELLI: No. That's a different  
20 impact. We're talking about is the presence of the work  
21 force in the -- is the presents of -- excuse me one  
22 second. Is the presence of the workforce going to create  
23 a burden on the existing services? Are they going to over  
24 burden the libraries in Mountain House, that sort of  
25 thing, that's what they're looking at. We're not looking

1 at water. We're looking at the mere fact that the project  
2 is there. What are the impacts from the presence of the  
3 project on the governmental services in the surrounding  
4 area.

5 MR. SIMPSON: So the question here would the  
6 project result in substantial adverse physical impacts  
7 associated with the provision of new or physically altered  
8 government facilities, need for new or physically altered  
9 government facilities, the construction of which could  
10 cause significant environmental impacts? So you're saying  
11 water use is not --

12 HEARING OFFICER CELLI: I'm saying water use is  
13 in soil and water. So socio, let's just stick to what  
14 socio is about.

15 MR. SIMPSON: Well, I'm pulling this out of the  
16 socioeconomics testimony. And it talks about the project  
17 s would result in substantial adverse physical impacts.

18 HEARING OFFICER CELLI: Are you looking in the  
19 FSA?

20 MR. SIMPSON: My understanding is you don't have  
21 an FSA.

22 STAFF COUNSEL WILLIS: He's looking at table --  
23 socioeconomics Table 2 --

24 HEARING OFFICER CELLI: SSA.

25 MR. SIMPSON: I'm looking at the SSA, yes.

1           STAFF COUNSEL WILLIS: Socioeconomics Table 2,  
2 4.8-3 where it doesn't discuss water. It discusses  
3 impacts that are on governmental facilities.

4           HEARING OFFICER CELLI: So if it's in the SSA,  
5 how is it that his question is not relevant?

6           STAFF COUNSEL WILLIS: He's asking about the  
7 impact of water --

8           HEARING OFFICER CELLI: The project on water --

9           STAFF COUNSEL WILLIS: Water impact, not on  
10 governmental facilities. I think he's reading more into  
11 what a governmental facility is then --

12          HEARING OFFICER CELLI: Do you have the SSA open  
13 where you're looking?

14          MR. SIMPSON: Do I?

15          MS. STENNICK: This is Amanda Stennick. I just  
16 read that two minutes ago.

17          HEARING OFFICER CELLI: Sustained.

18          Next question.

19          MR. SIMPSON: There was an objection that was  
20 sustained. I lost track here.

21          HEARING OFFICER CELLI: Yes. Its relevance.  
22 It's not soil and water.

23          MR. SIMPSON: I see. Will the project have a  
24 physical impact on government provided water facilities?

25          HEARING OFFICER CELLI: We just sustained that

1 objection. Is it going to have an impact, I mean that is  
2 not a socioeconomics question. That's a soil and water  
3 question. How much water is the project going to be  
4 using? So the answer -- so it's sustained. You need to  
5 go to a new line of questioning.

6 MR. SIMPSON: Well, my question is -- I took the  
7 words right out of socioeconomics. Will it result in  
8 substantial adverse physical impact associated with the  
9 provision of a new or physically altered government  
10 facility? So the government facilities are providing  
11 water.

12 HEARING OFFICER CELLI: Is there a government  
13 facility that anybody is aware of that's going in anywhere  
14 near this project?

15 MS. STENNICK: Water quantity and water quality  
16 are thoroughly analyzed in the soils and waters section of  
17 our analysis.

18 HEARING OFFICER CELLI: There you go. Asked and  
19 answered. Let's move on.

20 MR. SIMPSON: The physical alteration is the use  
21 of the water. It's not a new water facility. It's using  
22 the water that's supposed to be for crops. It's supposed  
23 to be for people.

24 HEARING OFFICER CELLI: The use of the water is  
25 analyzed in soil and waters section, not socio economics.

1 These people are not experts --

2 MR. SIMPSON: The CEQA question is in  
3 socioeconomics.

4 HEARING OFFICER CELLI: Maybe we're having a  
5 misunderstanding here. It seems like we are. But these  
6 experts are not expert in water use and these people can't  
7 testify as to whether the MEP is going to impact water.

8 MR. SIMPSON: Okay. Can the power plant affect  
9 property values?

10 MS. STENNICK: Could you repeat that?

11 MR. SIMPSON: Can the power plant affect property  
12 values?

13 MS. STENNICK: Well, I suppose theoretically it  
14 could, although I have not seen any studies that have  
15 singled out one factor, which is the cause of property  
16 values diminution.

17 MR. SIMPSON: Have you seen Exhibit 609?

18 HEARING OFFICER CELLI: Which would be the Davis  
19 study.

20 MS. STENNICK: The Davis study. Yes, I've seen  
21 Exhibit 609.

22 MR. SIMPSON: Is that a study that indicates that  
23 the power plant would effect property values?

24 MS. STENNICK: I have to perhaps qualify my  
25 response. Since I --



1           HEARING OFFICER CELLI: I would say -- if I might  
2 just speed things up. That document speaks for itself.  
3 And it specifically speaks to the property values  
4 vis-a-vis power plants. So I think that's the answer to  
5 your question. You know that that's the question. We've  
6 all read that article, the study.

7           So your next question, Mr. Simpson.

8           MR. SIMPSON: Thank you.

9           Would the project discourage residential  
10 development in the immediate vicinity?

11          MS. STENNICK: Would the project discourage  
12 residential development? That's fairly speculative. Any  
13 kind of development -- residential development projects  
14 would have to be brought forth to the agency of  
15 jurisdiction, which in that case would be Alameda County  
16 or the city of Tracy. I can't answer that question.

17          MR. SIMPSON: I see. Household was \$100,000 a  
18 year income could it be considered low income household?

19          MS. STENNICK: What are you referring to?

20          MR. SIMPSON: You report -- or your (inaudible)  
21 testimony was this was an affluent community. They had a  
22 household income of excess of \$100,000. So does that  
23 indicate that it's not a low income community?

24          MS. STENNICK: Are you referring to the 2009  
25 Mountain House community survey analytic summary, which

1 was prepared for the Mountain House Community Service  
2 District?

3 MR. SIMPSON: I was referring to the testimony I  
4 heard earlier that said this is an affluent community,  
5 that the household income is in excess of \$100,000.

6 MS. STENNICK: The Mountain House community  
7 survey on page 7 gives a breakdown of the community's  
8 demographic. One is household income. And it looks like  
9 63 percent of the community, their average income is  
10 \$119,437.

11 MR. SIMPSON: Maybe you already answered this.  
12 But did you rely on that community survey in preparation  
13 of your report?

14 MS. STENNICK: Regarding poverty?

15 MR. SIMPSON: In any aspect?

16 MS. STENNICK: Considered -- we considered the  
17 survey. We considered demographics -- excuse me -- 2000  
18 Census Bureau demographics to provide us with as best a  
19 picture that we could draw, given the resources that we  
20 had of the community. And the community not -- the  
21 community at large, not just necessarily the Mountain  
22 House community.

23 MR. SIMPSON: So your conclusion is there's how  
24 many people in the Mountain House community?

25 MR. WHEATLAND: Objection. Asked and answered.

1           HEARING OFFICER CELLI: Sustained. I think you  
2 got the answer to your question, which was that survey was  
3 considered by these experts.

4           MR. SIMPSON: I see.

5           You mentioned earlier there were seven workshops  
6 in the Mountain House community?

7           MR. HOFFMAN: Yes, I did.

8           MR. SIMPSON: The irrigation district, is that  
9 what you consider in the community?

10          MR. WHEATLAND: Objection. Argumentative.

11          HEARING OFFICER CELLI: I'm going to allow that  
12 answer, because, first of all, it assumes facts not in  
13 evidence whether there were workshops held at the  
14 irrigation district and if there were, whether that's  
15 considered part of the community. So let's get the answer  
16 to that information.

17          MR. HOFFMAN: There were workshops, they were  
18 held at BBID office. That location is close to where the  
19 project is to be sited if it is licensed. Staff did take  
20 a look after about I think the second workshop we held  
21 there were questions about holding workshops actually in  
22 the Mountain House community.

23          And one of the questions came up could we hold a  
24 workshop that the Mountain House Community Services  
25 District. And based upon the type of volume that we were

1 receiving, the amount of from and the amount of people  
2 (inaudible) did not look to show up, staff determined that  
3 the Mountain House Community Services District facilities  
4 would be too small. I was concerned, one, you get  
5 criticized that you don't hold the workshop in the  
6 Mountain House community. Next, you get criticized that  
7 you hold it within the Mountain House community in a  
8 facility that's too small for the meeting.

9 HEARING OFFICER CELLI: This goes a little beyond  
10 the question. I think you've answered the question. Go  
11 ahead, next question, please.

12 MR. SIMPSON: If someone wanted to build a winery  
13 in the vicinity of the project, would they likely  
14 choose -- if they had a choice next to the project or  
15 further from the project?

16 MR. WHEATLAND: Objection.

17 STAFF COUNSEL WILLIS: Objection.

18 HEARING OFFICER CELLI: Sustained.

19 MR. WHEATLAND: And, Your Honor, I'm really  
20 taking exception to the fact that he is asking a question  
21 that we previously objected to and you sustained. And  
22 he's asking it again. I think this is abuse of the  
23 cross-examination process.

24 HEARING OFFICER CELLI: Objection noted.

25 MR. SIMPSON: I'm sorry. I was hearing different

1 thresholds or what I can ask his witnesses or what I can  
2 ask staff's witnesses --

3 HEARING OFFICER CELLI: What we want to do is  
4 get --

5 MR. SIMPSON: -- which witnesses I can ask my  
6 questions to.

7 HEARING OFFICER CELLI: There may be some day  
8 somebody might build a winery and what they think about  
9 that and their speculation of the intentions of a vintner  
10 is a little beyond expertise of these folks. So let's  
11 stay --

12 MR. SIMPSON: Well, the project's effect on  
13 agricultural property is relevant.

14 HEARING OFFICER CELLI: In land use, yes. But  
15 not in socioeconomics. So come on, let's get to it.  
16 Sustained. Let's move on. I'm going to ask that those  
17 questions -- try to be mindful of what we've allowed in  
18 the past and try to ask the questions that haven't been  
19 asked already.

20 MR. SIMPSON: I'm not sure if I got a response to  
21 if socioeconomics and alternatives to the project.

22 MR. HOFFMAN: It does not.

23 HEARING OFFICER CELLI: Thank you.

24 No more questions.

25 HEARING OFFICER CELLI: Thank you, staff, any

1 redirect? These are your witnesses. So any redirect by  
2 staff?

3 STAFF COUNSEL WILLIS: None.

4 HEARING OFFICER CELLI: You are excused. Thank  
5 you for coming in to testify today.

6 We've now heard from the applicant's witness,  
7 their panel. We've heard from staff's panel. The people  
8 I'm going to need some clarification here.

9 With regard to socioeconomics resources, I have  
10 Rajesh Dighe and Jass Singh stating in their prehearing  
11 conference statements they were going to call Robert  
12 Sarvey as their witness. And then I have Bob Sarvey and I  
13 you have Rob Simpson I guess operating as their own  
14 witness. I'm not really sure.

15 What's your intention, Mr. Sarvey?

16 MR. SARVEY: I intend to present myself.

17 HEARING OFFICER CELLI: Okay. So are you going  
18 to -- did you put in your testimony you have no further  
19 direct I take it. You're going to make yourself available  
20 for cross.

21 MR. SARVEY: My understanding we weren't allowed  
22 to do any direct, at least I was instructed at the other  
23 hearings.

24 HEARING OFFICER CELLI: Thanks. So with that,  
25 you're going to make yourself available for cross.

1 But other than Mr. Sarvey, I want to know whether  
2 you have any other witnesses for socioeconomics, Mr.  
3 Sarvey?

4 MR. SARVEY: Just myself.

5 HEARING OFFICER CELLI: Okay. What about Rajesh  
6 Dighe, do you have any other witnesses for socioeconomics?

7 MR. DIGHE: No more.

8 HEARING OFFICER CELLI: Okay. And Mr. Singh, did  
9 you have any other witnesses that you're calling for  
10 socioeconomics?

11 MR. SINGH: The public comment was not published  
12 today on the website. In today's hearing we are going to  
13 take the public comment. And publics are the only --

14 HEARING OFFICER CELLI: That's not evidence. My  
15 question is do you have a witness -- an expert witness  
16 that you're bringing --

17 MR. SINGH: No.

18 HEARING OFFICER CELLI: That was my question.

19 So with that then, and I've received all the  
20 socioeconomics of staff and applicant. So Mr. Sarvey, do  
21 you have a motion?

22 MR. SARVEY: Yeah. I'd like to move into the  
23 evidentiary record exhibit 400, the socioeconomics  
24 testimony of Robert Sarvey.

25 HEARING OFFICER CELLI: Just 400?

1 MR. SARVEY: At this point, yes.

2 HEARING OFFICER CELLI: Okay. Any objection to  
3 the receipt of Exhibit 400 from the applicant?

4 MR. WHEATLAND: No.

5 HEARING OFFICER CELLI: Mountain House?

6 MR. GROOVER: No.

7 HEARING OFFICER CELLI: Mr. Dighe?

8 MR. DIGHE: No.

9 HEARING OFFICER CELLI: Mr. Wilson, any objection  
10 to the receipt of Exhibit 400, the testimony of Rob  
11 Sarvey? Do you have any objection to that?

12 MR. WILSON: No, I don't.

13 HEARING OFFICER CELLI: Mr. Singh, any objection?

14 MR. SINGH: No objection.

15 HEARING OFFICER CELLI: Sierra Club, any  
16 objection?

17 MR. CARLTON: No objection.

18 HEARING OFFICER CELLI: Mr. Simpson, any  
19 objection to Sarvey's testimony?

20 MR. SIMPSON: Sarvey, no. No objection.

21 HEARING OFFICER CELLI: Staff, any objection?

22 STAFF COUNSEL WILLIS: No.

23 HEARING OFFICER CELLI: All right. 400 is  
24 received.

25 (Whereupon the above-referenced document



1           was received into evidence by the  
2           Hearing Officer.)

3           HEARING OFFICER CELLI: With that, then I  
4 guess -- pardon me?

5           MR. LAMB: I have a process question.

6           HEARING OFFICER CELLI: Yes, sir?

7           MR. LAMB: Earlier you received some testimony  
8 which I think was factually inaccurate. What's the proper  
9 way -- I don't need to know if it's relevant. I don't  
10 know what the process is (inaudible) because you are  
11 accepting evidence now. So if it proves to be inaccurate  
12 then we're putting in the record and I know it's not  
13 accurate.

14          HEARING OFFICER CELLI: That's a risk we run.

15          MR. LAMB: Is it appropriate for us to address it  
16 in our brief because I don't think we can introduce new  
17 evidence in our brief.

18          HEARING OFFICER CELLI: That's correct.

19          MR. LAMB: So how do you --

20          HEARING OFFICER CELLI: We are stuck with the  
21 record we get. And we're hoping that the parties give us  
22 the best evidence they can. So if you detect something  
23 that's wrong --

24          MR. LAMB: I have.

25          HEARING OFFICER CELLI: So for instance, that 48

1 students businesses --

2 MR. LAMB: I don't even know if it's relevant. I  
3 guess that would be any question to staff, if they knew  
4 that it was --

5 HEARING OFFICER CELLI: You're just going to  
6 have --

7 MR. LAMB: -- a significantly different number,  
8 would it change their answer --

9 HEARING OFFICER CELLI: In your position, since  
10 you're not putting in any evidence, there's really nothing  
11 you can do. Now, the applicant, staff, the parties who  
12 actually have evidence to put in may be able to put in  
13 their evidence and use their evidence to correct the  
14 record.

15 MR. LAMB: Okay.

16 HEARING OFFICER CELLI: So have a little faith in  
17 the process.

18 MR. LAMB: I don't know what the process is.  
19 That's why I'm asking where --

20 HEARING OFFICER CELLI: The process is we're  
21 taking in all this evidence now and then what's going to  
22 happen is the Committee is going to go through all this  
23 evidence as it relates to the various topics that we're  
24 going through and then we're going to weigh the evidence,  
25 weigh the veracity of the evidence, the probity of the

1 evidence and then we --

2 MR. LAMB: That's what I'm trying to figure out.  
3 You sort of answered it.

4 MR. SIMPSON: Well, in between there, isn't there  
5 an opportunity for us to brief on our opinion of the  
6 evidence?

7 HEARING OFFICER CELLI: That's absolutely  
8 correct. And in fact, your briefs are real important part  
9 of that process, because that's kind of what frames the  
10 issues for us, how we know what the issues are for the  
11 parties. So the briefs come in. Absolutely you will be  
12 filing an opening brief and a rebuttal brief. And then  
13 after the decision comes out, there's still opportunity  
14 for public comment on the PMPD itself.

15 MR. LAMB: I think I'll withdraw that. Don't  
16 like that sloppy record.

17 HEARING OFFICER CELLI: Thank you.

18 So now I'm going to go around. Mr. Sarvey, his  
19 evidence is in. I'm going to start with the applicant.  
20 This is cross-examination of Mr. Sarvey. So this is  
21 Sarvey's case in chief right here. Go ahead.

22 Okay. You can go last, if you want. I guess  
23 that's appropriate since you have the burden.

24 Any questions for Mr. Sarvey by Mountain House?

25 MR. GROOVER: None.

1 HEARING OFFICER CELLI: Mr. Dighe, any questions  
2 for Sarvey?

3 MR. DIGHE: None.

4 HEARING OFFICER CELLI: Mr. Wilson, any questions  
5 for Sarvey?

6 MR. WILSON: Not at this time.

7 HEARING OFFICER CELLI: Mr. Singh stepped out of  
8 the room.

9 Sierra Club, is there any question for Sarvey?

10 MR. CARLTON: No. None.

11 HEARING OFFICER CELLI: Any question by Mr.  
12 Simpson of Sarvey?

13 MR. SIMPSON: Mr. Sarvey, can you summarize your  
14 testimony for us?

15 MR. WHEATLAND: Objection.

16 HEARING OFFICER CELLI: Sustained. We've  
17 received it. It's gotten in.

18 Mr. Singh, any questions for Mr. Sarvey?

19 MR. SINGH: Yes. Oh, Mr. Sarvey, so this would  
20 be related to socioeconomics, right?

21 HEARING OFFICER CELLI: That's correct. And it's  
22 related only to his testimony on socioeconomics.

23 MR. WHEATLAND: Your Honor, I'm going to object  
24 to any questions Mr. Singh and Mr. Sarvey. He haven't  
25 established any adverse interest. In fact --

1 HEARING OFFICER CELLI: We're going to hear that.  
2 We're going to find out whether he's going to have adverse  
3 interest or not. If you don't, I'm going to ask you not  
4 to ask questions. So do you have an adverse -- do you  
5 have a question of this witness as a posing --

6 MR. SINGH: I have a few questions. Basically  
7 how Mariposa plant is going to help our community as  
8 racial minority. That is a question I wanted to ask him  
9 if he has any information to shed on us.

10 HEARING OFFICER CELLI: I don't think we're going  
11 to be able to do that. But let's see what Mr. Sarvey has  
12 to say. I think answer is going to be no on this one, but  
13 go ahead.

14 MR. SARVEY: My testimony is that the Mariposa  
15 Energy Center presents an adverse impact to the community  
16 of Mountain House in relation to their PG&E utility rates  
17 are going to go up because the project is not needed.

18 HEARING OFFICER CELLI: That's the some total of  
19 his testimony. We've all read that.

20 MR. SINGH: And also, Mr. Sarvey, I was reading  
21 into your testimony you also mentioned that since the  
22 house pricing goes down, the collection of the taxes being  
23 done also goes down and there will be less money from the  
24 state to our community. Is that correct?

25 MR. WHEATLAND: Objection.

1 HEARING OFFICER CELLI: Sustained.

2 Argumentative. Next question.

3 MR. SINGH: I'd like to understand -- I'm not a  
4 lawyer. As you --

5 HEARING OFFICER CELLI: I understand. But let me  
6 make it real clear, if I sustain the objection, that means  
7 you can't ask that question. If I overrule an objection,  
8 it means that you can ask the question and the witness can  
9 answer. Since I sustained that one, you can't ask that  
10 question. That's the short version.

11 MR. SINGH: No, I understand. But at the same  
12 time, you know, Mr. Sarvey has some crucial information we  
13 want.

14 HEARING OFFICER CELLI: Which we've already  
15 received. His testimony was just received. In fact I  
16 think you were here when we received his testimony. Every  
17 thing he said in his opening testimony is in the record.  
18 I do not want to cover that ground again now and waste our  
19 time. We've got a lot to do. So his testimony is in. Is  
20 there something not in his testimony that you have to ask  
21 now?

22 MR. SINGH: So that's what I'm asking basically,  
23 which is not in his testimony or I believe it is therein  
24 testimony which Sarvey can throw some light on it  
25 because -- so because the impact of the house prices will

1 owe less taxes to the State and less money to our Mountain  
2 House --

3 HEARING OFFICER CELLI: Let me speak to that,  
4 okay. The houses went down. There is no power plant  
5 there. The power plant didn't cause the houses to go --  
6 prices to go down. Had nothing to do with it. It isn't  
7 there. It's vaporware, if you'll pardon the expression.  
8 It doesn't exist yet. It can't exist until and unless and  
9 until this body and the Commission decides to give a  
10 license.

11 Meanwhile, the property values in Mountain House  
12 went down 50 some off percent or whatever. Has nothing to  
13 do with the power plant so far.

14 MR. SINGH: Mr. Celli, with due respect, if I get  
15 a letter from Mariposa today the home prices of Mountain  
16 House will not go down because of power plant and it goes  
17 down they'll cover every resident. I think we won't be  
18 sitting here then.

19 HEARING OFFICER CELLI: I can't speak to that.  
20 It's not --

21 MR. SINGH: If we can get that from the applicant  
22 our racial minority can be protected if X, Y, Z, happens  
23 in the future.

24 HEARING OFFICER CELLI: All I'm saying is this.  
25 The fact that the prices have already gone down cannot --

1 it is impossible for that to be the fault of the power  
2 plant that hasn't been built yet.

3 MR. SINGH: But in the future it can, right?  
4 People have witnessed that, yes, the house prices can go  
5 down because --

6 HEARING OFFICER CELLI: That's an expert question  
7 that's already been answered.

8 Look, I'm not sure Mr. Sarvey is going to be the  
9 person you're going to be able to get that answer from,  
10 because he's not necessarily a real estate expert. And he  
11 didn't write that article. That article is in evidence.  
12 We already have all of this in evidence. So what I'm  
13 asking, Mr. Singh, is is it necessary for you to ask a  
14 question of Mr. Sarvey now, or are we just wasting time?  
15 And you need to establish that there is an adverse  
16 interest in your question. And I don't even know if  
17 you're going to be able to do that. And if a moment, if  
18 you don't come up with a question, I'm just going to make  
19 that finding.

20 MR. SINGH: So Mr. Celli, I want to try here --  
21 as I told you earlier also, we need to drive some  
22 information by asking these people, right. And some  
23 information which we do not know which Rajesh do not know  
24 which other parties do not know. And which information  
25 only Sarvey know and he can throw some light on it.



1 HEARING OFFICER CELLI: Mr. Sarvey submitted all  
2 of his testimony already in writing. We have it. It just  
3 got accepted into the record. We have to --

4 MR. SINGH: Let us say like for example I'm not  
5 saying that something that happens (inaudible) some of us  
6 been bought by the Mariposa plant people or Mitsubishi  
7 guys. So how should we establish that effort if we don't  
8 ask those questions from each other?

9 HEARING OFFICER CELLI: You know, I didn't get  
10 that. Mitsubishi? I don't understand.

11 MR. SINGH: So Mitsubishi is the one that's  
12 driving this project, right. Is the parent corporation.  
13 And subsidy is Mariposa Energy Plant, right? So new  
14 Mitsubishi comes and he bribes somebody here -- I'm just  
15 saying that. And we aren't saying -- and we want to  
16 establish that somebody hasn't undergone those sort of  
17 evenings and we want to have under the oath of questions  
18 those questions to be asked.

19 HEARING OFFICER CELLI: There's no evidence of  
20 that.

21 Mr. Sarvey, do you have evidence of a bribery?

22 MR. WHEATLAND: Your Honor, I object. I mean,  
23 the question is not relevant and Mr. Singh is way beyond  
24 the respectful many of any reasonable cross-examination.

25 MR. SINGH: Can I speak to you off the record?

1 HEARING OFFICER CELLI: Not right now.

2 MR. SINGH: I'd like to speak to you.

3 HEARING OFFICER CELLI: No. There is an ex parte  
4 rule. I'm a member of this Committee. And nobody can  
5 speak to me off the record.

6 MR. SINGH: Okay.

7 HEARING OFFICER CELLI: You can speak to me on  
8 the record. Now is your chance. Let's talk.

9 MR. SINGH: There is some information I believe  
10 that some of them are holding that information which  
11 should come out in front of the CEC. I want to drive that  
12 information should come out. So how should we do that?  
13 It doesn't appear in the exhibit and we are the racial  
14 minority which will get impact at the end of the day. I  
15 you want to ask question about --

16 HEARING OFFICER CELLI: Listen, we've been  
17 indulgent, but the fact is socioeconomics is only relevant  
18 in establishing whether there is a minority or not and the  
19 fact is whether there is a minority only matters if there  
20 is an impact. So you want to spend your time showing  
21 there is some impact but not whether -- we have whatever  
22 evidence we have as to whether there is a racial minority  
23 here or not. When there is a low income population.

24 MR. SINGH: Can I speak to Sarvey for a moment?

25 HEARING OFFICER CELLI: Not right now. You

1 haven't been sworn yet, Mr. Sarvey.

2           Mr. Singh, here's the situation. He's a friendly  
3 witness. You're not adverse, okay? You're on the same  
4 side. Okay.

5           MR. SINGH: So let's do that. Not now. But do  
6 you cut out some time where we can ask you questions?

7           HEARING OFFICER CELLI: You can talk to Mr.  
8 Sarvey all you want off the record.

9           MR. SINGH: No. No. No. I want to bring that  
10 into your table some of those question's answers into the  
11 record.

12           HEARING OFFICER CELLI: What happened was this.  
13 We had a prehearing conference statement. Everybody  
14 brought me what their evidence was. They listed it. All  
15 of the parties have had a chance to see it. And that as  
16 what's coming in the record now.

17           MR. SINGH: You know, sir, I'm telling you  
18 truthfully, had a been a liar I would have nailed down  
19 Mariposa by now. Trust me on this.

20           HEARING OFFICER CELLI: You're only going to nail  
21 them down with evidence.

22           MR. SINGH: But the thing is that, you know,  
23 because of lack of (inaudible) and how to establish the  
24 record for the impact, we missed (inaudible) for bringing  
25 the records or you give us another chance, okay, now you

1 bring the record and the obligation towards racial  
2 minority one should have, you know.

3 HEARING OFFICER CELLI: Let me just --

4 MR. SINGH: If we're not able to establish the  
5 record now, can you bring some further evidence that we  
6 can submit?

7 HEARING OFFICER CELLI: No. We already made it  
8 clear at the prehearing conference. We told you how the  
9 game was going to be played, what the rules are, what the  
10 procedures are, and what we were going to receive. And  
11 the only way we're going to allow in any new evidence is  
12 by stipulation of all of the parties.

13 MR. SINGH: I don't have any questions. Thanks.

14 HEARING OFFICER CELLI: Thank you.

15 Now, any question of Mr. -- I have already been  
16 around -- we have a question for Mr. Sarvey? I thought I  
17 asked you already.

18 MR. SIMPSON: Yeah, but you cut me off when I  
19 started to ask him.

20 HEARING OFFICER CELLI: Mr. Sarvey, would you be  
21 sworn, please?

22 Mr. Petty, would you swear Mr. Sarvey?

23 (Whereupon the witness was sworn.)

24 MR. SARVEY: My name is Robert Sarvey.  
25 S-a-r-v-e-y is the last name.

1 HEARING OFFICER CELLI: Thank you. So my  
2 recollection was I went around the table and asked  
3 everybody did I not ask staff either? Okay. I thought  
4 Mr. Singh was out of the room and then we came back to  
5 him.

6 MR. GROOVER: You did. You got to Mr. Simpson.  
7 Mr. Singh came back in. You went back to Mr. Singh before  
8 fin Mr. Simpson.

9 HEARING OFFICER CELLI: Thank you very much.  
10 Sorry about that, Mr. Simpson. Go ahead.

11 CROSS-EXAMINATION

12 MR. SIMPSON: Mr. Sarvey, can a power plant  
13 affect property values?

14 MR. WHEATLAND: Objection. It's not an adverse  
15 question. And Mr. Simpson and Mr. Sarvey belong to the  
16 same organization.

17 HEARING OFFICER CELLI: Sustained. And I want to  
18 ask you, Mr. Sarvey, are you holding yourself as an expert  
19 in property values?

20 MR. SARVEY: No, sir.

21 HEARING OFFICER CELLI: Okay. Anything further  
22 Mr. Simpson? Because it's going to be difficult for you  
23 to get over the adverse opposing witness hurdle.

24 MR. SIMPSON: Sure. I'd like to object to the  
25 adverse opposing witness proposal. I don't see a basis

1 for that in the Warren-Alquist Act or --

2 HEARING OFFICER CELLI: We entered it into the  
3 record already. Anything further?

4 MR. SIMPSON: -- the part where you just make up  
5 the rules.

6 HEARING OFFICER CELLI: No, actually, you were  
7 sitting in the room when I read the code section when we  
8 were at BBID.

9 MR. SARVEY: Yeah, the hearing procedures. That  
10 you makeup the -- what as that referring to?

11 HEARING OFFICER CELLI: 1212(c), "subject to the  
12 exercise of lawful discretion of the Presiding Committee  
13 Member as set forth in 1203(c), each party shall have the  
14 right to call and examine witnesses, to introduce  
15 exhibits, to cross-examine opposing witnesses on any  
16 matters relevant to the issues of the proceeding." So I  
17 didn't make that up. And I don't appreciate --

18 MR. SIMPSON: I meant the lawful discretion part.

19 HEARING OFFICER CELLI: Noted.

20 MR. SIMPSON: I thought that was the emphasis  
21 last time it was the Committee discretion --

22 HEARING OFFICER CELLI: Anything further?

23 MR. SIMPSON: -- whether they allow examination  
24 of witnesses that aren't opposing.

25 HEARING OFFICER CELLI: I'll take that as a no.

1 Staff, cross?

2 STAFF COUNSEL WILLIS: No.

3 HEARING OFFICER CELLI: No cross by applicant?

4 MR. WHEATLAND: No questions.

5 HEARING OFFICER CELLI: Mr. Sarvey, you're

6 excused as a witness. You're not excused as an

7 intervenor, not yet, anyway.

8 Now, Mr. Dighe you were the next person that had

9 socioeconomics resources down. You have a bunch of

10 evidence that you wanted to bring in.

11 MR. DIGHE: Yes.

12 HEARING OFFICER CELLI: Do you have a motion as

13 to the exhibits you wanted to move into evidence?

14 MR. DIGHE: Yes. Specifically, I want to move

15 all of the Exhibits 600 to 609.

16 HEARING OFFICER CELLI: Is there any objection to

17 Exhibit 600 through 609, applicant?

18 MR. WHEATLAND: We object to applicant 609 coming

19 in as testimony. We have no objection to its receipt as

20 comment.

21 HEARING OFFICER CELLI: Okay. Any objection to

22 600 through 609? Sarvey?

23 MR. SIMPSON: No objection.

24 HEARING OFFICER CELLI: Mountain House?

25 MR. GROOVER: None.

1 HEARING OFFICER CELLI: Mr. Wilson?

2 MR. WILSON: No.

3 HEARING OFFICER CELLI: Mr. Singh?

4 MR. SINGH: No.

5 HEARING OFFICER CELLI: Mr. Singh said no. He's

6 away from his microphone. But he said no. Sierra Club,

7 any objection to Exhibits 600 through 609?

8 MR. CARLTON: No.

9 HEARING OFFICER CELLI: Any objection, Mr.

10 Simpson?

11 MR. SIMPSON: Just to the extent I can't

12 cross-examine the witness.

13 HEARING OFFICER CELLI: 600 through 609, any

14 objection from staff?

15 STAFF COUNSEL WILLIS: Just the same objection

16 that the applicant had on 609 that we would determine that

17 would be not expert testimony.

18 HEARING OFFICER CELLI: 600 through 609 will be

19 received into evidence.

20 (Whereupon the above-referenced document

21 was received into evidence by the

22 Hearing Officer.)

23 HEARING OFFICER CELLI: Now, at this time, Mr.

24 Dighe, since we did receive your testimony, the one thing

25 we have to do -- and I hope this works -- is we were going



1 to play that video.

2 MR. DIGHE: Yes. Before we go to that, I just  
3 want to make sure the 609 exhibit had the housing values  
4 and couple of links which I put it as PDF so all these  
5 sections are going into evidence, which includes the  
6 Mountain House. All the links which are therein the  
7 exhibits are going as evidence. I just want to make sure  
8 everything is going, they're not missing.

9 HEARING OFFICER CELLI: Right. 609 is received.  
10 And part of 609 I thought was the Davis --

11 MR. DIGHE: That's correct.

12 HEARING OFFICER CELLI: Those are received into  
13 exhibit. At this time, I'm going to ask the court  
14 reporter to actually continue to -- we're going to play a  
15 video and we want the audio to be into the record. This  
16 is exhibit -- what exhibit number is this?

17 MR. DIGHE: This is the Exhibit 608. And can you  
18 make sure you play the new video which I provided today?  
19 Thank you.

20 "A new study said communities are not just down  
21 but almost (inaudible). Among them, Mountain House near  
22 Tracy. The findings are so define infrastructure  
23 (inaudible) researcher predict that some areas may never  
24 come back. Juliette Goodrich in Mountain House, a  
25 neighborhood some compare to a modern day town. Julia.

1           "Hi, Dana. I think the sign says it all, for  
2 sale signs. This was the land of no money down, low  
3 interest rates. Then we had the economic downturn and  
4 whamo, people had to leave their homes, a lot of them in  
5 foreclosure. And the big question now, will it rebound?

6           "Welcome to Mountain House, best described by  
7 homeowner Douglas LaConte.

8           "Basically this is a development in the middle of  
9 nowhere. And what we have (inaudible) we have people that  
10 are struggling to pay their bills.

11           "La Conte and other Mountain House owners bought  
12 during the housing boom. No money down, low interest  
13 rates. Fulfilling the American dream. And now  
14 (inaudible) over their heads. I, myself am struggling  
15 with one check. My room rate is struggling with another.

16           "The economic downturn became a hard knocks  
17 lesson so (inaudible) first time homeowners.

18           "(inaudible) say around \$2,000 a month and the  
19 rates ended up adjusting a few years down the road and  
20 their payment ended up going up to 3,000 or 3500  
21 (inaudible) down fall now.

22           "Several areas that grew rapidly during the boom,  
23 Stockton, Modesto, Fresno. But the housing (inaudible)  
24 left a number of homes unoccupied because they were  
25 over-built and the foreclosure prices, turning communities

1 like Mountain House into ghost towns.

2 "When everything went bad, this place emptied  
3 out, just completely. I mean, it was a graveyard.

4 "Starting to come back as we toured the  
5 neighborhood, the only difference, the price. A bonus to  
6 a home buyer, a heart break to an owner.

7 "Most of the houses were (inaudible) out here.  
8 Now people are buying them for about four.

9 "While some neighborhoods may never come back or  
10 come back slowly, some cities in the Tri Valley are seeing  
11 an optimistic housing market recovery.

12 "You have certain neighborhoods that are still  
13 highly in demand and their days on the market could  
14 (inaudible) sell within a week period of time. It all  
15 depends on where the location of the homes are at.

16 "Now, economists predict some areas like this  
17 one, like Mountain House won't reach a full recovery until  
18 2030.

19 "A new study says several California communities  
20 are not just down, but almost out (inaudible) "

21 HEARING OFFICER CELLI: Which exhibit was that?

22 MR. DIGHE: Exhibit 608. Thank you.

23 HEARING OFFICER CELLI: Thank you. So that will  
24 be in the transcript in its entirety.

25 And you have no witnesses?

1 MR. DIGHE: No. No witnesses.

2 HEARING OFFICER CELLI: Okay. And Mr. Singh,  
3 where did he go? He left. Okay.

4 Mr. Simpson, do you have any witnesses for  
5 socioeconomics?

6 MR. SIMPSON: Just myself.

7 HEARING OFFICER CELLI: Okay. And we've received  
8 Exhibit 1000 already.

9 Did applicant wish to cross-examine Mr. Simpson?  
10 Did you intend to put himself --

11 MR. WHEATLAND: My understanding was that his  
12 testimony was received into evidence by declaration  
13 without the need to appear. We don't have any questions  
14 for him for Mr. Simpson.

15 I do have one area of questions for Mr. Dighe.  
16 It does not go to cross-examination of his testimony. But  
17 I did note that he did not include a statement of  
18 qualifications or a resume with his testimony and through  
19 the Committee I'd like to ask him just to briefly  
20 summarize his academic and professional qualifications.

21 HEARING OFFICER CELLI: Okay. Let's have Mr.  
22 Dighe sworn, please, Mr. petty.

23 (Whereupon the witness was sworn.)

24 MR. DIGHE: Yes, I do.

25 MR. PETTY: Please state your name for the

1 record.

2 MR. DIGHE: Rajesh Dighe. Thank you.

3 HEARING OFFICER CELLI: Go ahead.

4 CROSS-EXAMINATION

5 MR. WHEATLAND: Mr. Dighe, you did not include a  
6 statement of qualifications with your testimony; is that  
7 correct?

8 MR. DIGHE: That's correct.

9 MR. WHEATLAND: Would you please briefly  
10 summarize your academic qualifications, what colleges you  
11 attended, the degree and when you graduated?

12 MR. DIGHE: Sure. (inaudible) electronic center  
13 (inaudible). I graduated from college in India. I have  
14 about 20 years experience now in software technology  
15 working for Fortune 500 companies, start-ups all over the  
16 Bay Area. There's pretty much.

17 MR. WHEATLAND: And you've worked for Fortune 500  
18 companies. Can you give us an example of several of the  
19 companies.

20 MR. DIGHE: Yes. Sure. So I was working for  
21 Informix, Schrab, IBM (inaudible) company. I was a  
22 consultant for (inaudible). It's a east coast. I believe  
23 it was bought out by some other company. I don't know.  
24 Then I worked for start ups which went public. It was  
25 soft area elemental security (inaudible) start up. Now I

1 am with Rajesh Dighe Echostar Satellite Dish company. So

2 I have been with them with (inaudible.)

3 MR. WHEATLAND: Thank you. That's all the

4 questions I have.

5 HEARING OFFICER CELLI: How long have you lived

6 in Mountain House?

7 MR. DIGHE: I've lived in Mountain House since

8 2006. Moved there May. Somewhere around May 2006. So I

9 you bought before this.

10 HEARING OFFICER CELLI: Thank you. Cross by

11 staff?

12 STAFF COUNSEL WILLIS: No.

13 HEARING OFFICER CELLI: Any cross by any other

14 witness? Seeing no interest, then --

15 MR. LAMB: I have a little bit of concern about

16 the characterization of Mountain House as a ghost town

17 because that's not my experience. So I guess I kind of --

18 HEARING OFFICER CELLI: That will be in your

19 brief.

20 MR. LAMB: Thank you.

21 HEARING OFFICER CELLI: You're excused as a

22 witness, Mr. Dighe at this time. Thank you for your

23 testimony. But don't leave.

24 I believe we've taken in -- correct me if I'm

25 wrong, but I received all of the evidence from everybody

1 in socioeconomics.

2 Mr. Dighe.

3 MR. DIGHE: I'm wondering if the socioeconomic  
4 record can be kept open because I think we had some  
5 conversation around how it's kind of related to soil and  
6 water. I think Rob Simpson brought it up.

7 HEARING OFFICER CELLI: Here's what I think --

8 MR. DIGHE: Workforce safety, right, I think it's  
9 related to Mountain House, because I think there are some  
10 areas which are going to be discussed probably down the  
11 line.

12 HEARING OFFICER CELLI: Okay. So that qualifies  
13 as a motion. Your motion to leave it open.

14 MR. DIGHE: Sure.

15 HEARING OFFICER CELLI: I'm going to deny the  
16 motion, because I believe we have a complete record on  
17 socioeconomics. We've gotten everybody's exhibits.  
18 Nobody's exhibits were excluded. Everybody's testimony  
19 that they submitted, plus additional testimony is now in  
20 the record. However, you're going to be able to write a  
21 brief and make your arguments in your brief. And I think  
22 at this point, people are making more argument than asking  
23 questions of evidence. So let's save it for your brief.  
24 Okay. Then thank you. Socioeconomics resources is  
25 closed. The record on socioeconomics is closed. Let's

1 get to the next. We go from socioeconomics to  
2 alternatives. Do we have an alternatives panel?

3 MR. WHEATLAND: Well, we have an alternatives  
4 witness. I know the staff also has been alternatives  
5 witness. And what I'd like to suggest to the Committee is  
6 that I noticed in this last subject area the intervenors  
7 asked the same questions virtually of both the staff and  
8 the applicant.

9 In the interest of time, I'd like to suggest that  
10 we might make the staff and the applicant both available  
11 at the same time so that we can have one round of  
12 questions rather than two.

13 MR. SARVEY: Objection.

14 HEARING OFFICER CELLI: What's the basis of your  
15 objection? Because I'm starting to think that sounds like  
16 a good idea. What's your objection?

17 MR. SARVEY: Well, my questions are strictly for  
18 the staff. I have no questions for the applicant. I'd  
19 rather just get on utility staff.

20 HEARING OFFICER CELLI: And you can do that. You  
21 can basically say I'm not asking you any questions --

22 MR. SARVEY: But I don't want answers from the  
23 applicant's witnesses.

24 MR. WHEATLAND: That's fine. We'll be happy to  
25 sit down if he's asking questions of the staff. But to



1 the extent that the party has the same question of both,  
2 I'd just suggest we might have both.

3 HEARING OFFICER CELLI: Objection. Any other  
4 objection?

5 MR. SIMPSON: Yeah. I object.

6 HEARING OFFICER CELLI: And basis?

7 MR. SIMPSON: Mr. Sarvey's basis and the  
8 questions -- hearing the responses from one party and then  
9 the intervenors and the other party gives us a chance to  
10 look at this full picture more than having applicant's  
11 witness jump in when questions are posed to staff. I  
12 understand that the staff and the applicant are aligned on  
13 this. If it is just one witness, if staff and applicant  
14 are aligned, then Mr. Wheatland's objections to staff  
15 testimony prior objections, I don't know why those stand  
16 when we can't even ask each other questions.

17 HEARING OFFICER CELLI: All right. So that's all  
18 a good question for you to talk to the public adviser  
19 about later about our process.

20 MR. SARVEY: I have one as well. This is a  
21 precedent I've never seen an applicant and staff witness  
22 together. I mean, that's unprecedented. I've never soon  
23 that before.

24 MR. CARLTON: I object to. Sierra Club objects.  
25 I think -- I mean, I understand the same question but you

1 can deal with that by sustaining the objections to the  
2 same questions and we can deal with it if we don't have  
3 questions of the applicant and just the staff we cannot  
4 ask questions like we've been doing. But to separate the  
5 process -- to combine the process it adds confusion.

6 MR. SARVEY: I don't think anybody has any  
7 questions of the applicant. I could be wrong.

8 HEARING OFFICER CELLI: Let me see a show of  
9 hands how many people have questions for the applicant's  
10 witness with regard to alternatives? Seeing none, and  
11 since we have the direct testimony in, that takes care of  
12 that problem.

13 Let me see a show of hands how many people have  
14 questions of staff's witnesses with regard -- that would  
15 be Sarvey, Dighe, Sierra Club, Simpson, and we'll see. So  
16 who is staff's alternative witness?

17 STAFF COUNSEL WILLIS: Mr. Hoffman. And we also  
18 invited David individual I verier for comments just based  
19 not on testimony but based on his comments.

20 HEARING OFFICER CELLI: Mr. Vidaver, I'm going to  
21 ask that you come on over and be part of this question.  
22 You may or may not get a question. I don't know if you  
23 will. Next to Mr. Hoffman. He has a wireless mike and  
24 you can pass it back and forth. I'm going to ask Mr.  
25 petty to swear them both in, please.

1 (Whereupon the witnesses were sworn.)

2 MR. VIDAVER: I do.

3 MR. PETTY: Please state and spell your name for  
4 the record.

5 MR. VIDAVER: David individual, V as in Victor,  
6 i, D as in David, V as in Victor e-r.

7 HEARING OFFICER CELLI: Before you begin your  
8 questions -- Mr. Wheatland.

9 MR. WHEATLAND: May I move the admission of  
10 Exhibit 10, which is our alternatives testimony that has  
11 not been previously received in evidence.

12 HEARING OFFICER CELLI: Any objection to  
13 Exhibit 10, Mr. Sarvey?

14 MR. SARVEY: No objection.

15 HEARING OFFICER CELLI: Any objection Mountain  
16 House?

17 MR. GROOVER: None.

18 HEARING OFFICER CELLI: Rajesh Dighe, any  
19 objection to Exhibit 10?

20 MR. DIGHE: None.

21 HEARING OFFICER CELLI: Andy Wilson, any  
22 objection?

23 MR. WILSON: None.

24 HEARING OFFICER CELLI: Any objection from Sierra  
25 Club?

1 MR. CARLTON: No.

2 HEARING OFFICER CELLI: Any objection from Mr.  
3 Singh?

4 MR. SINGH: No.

5 HEARING OFFICER CELLI: He said no, even though  
6 his mike wasn't on.

7 Mr. Simpson, any objection to Exhibit 10?

8 MR. SIMPSON: No objection.

9 HEARING OFFICER CELLI: Staff, any objection to  
10 Exhibit 10?

11 STAFF COUNSEL WILLIS: No objection.

12 HEARING OFFICER CELLI: Exhibit 10 is received  
13 into evidence.

14 (Whereupon the above-referenced document  
15 was received into evidence by the  
16 Hearing Officer.)

17 HEARING OFFICER CELLI: So these are staff's  
18 witnesses. This will be staff's -- but before you do, Mr.  
19 Carlton, you had a question.

20 MR. CARLTON: I don't understand what Mr. Vidaver  
21 is doing. What lies he there? There is no testimony that  
22 he's giving; is that correct?

23 HEARING OFFICER CELLI: I don't know if there is  
24 or not. But since staff said that they called down a  
25 couple witnesses, I'm just putting them all up there. And

1 if you have any questions for Mr. Vidaver as it relates to  
2 alternatives, he's available. Because you know the  
3 complaints is often if you call for staff witnesses, the  
4 witnesses say things like that's outside of my area of  
5 expertise. And people get upset about that. So I figure  
6 better to have too many witnesses than not enough.

7 MR. SIMPSON: Can we do the same thing when we  
8 call witnesses?

9 HEARING OFFICER CELLI: Yes. But you don't have  
10 any witnesses that I'm aware of.

11 MR. SARVEY: Does Mr. Vidaver have any pre-filed  
12 testimony?

13 HEARING OFFICER CELLI: I believe he does.

14 STAFF COUNSEL WILLIS: No, he doesn't. He  
15 provided comments -- based on what was ruled on at the  
16 prehearing conference was the whole issue of need  
17 analysis, that staff does not do a need analysis was ruled  
18 in admissible. And so we filed Mr. Vidaver's comments  
19 based on what was previously filed, but only as comments.  
20 He's invited -- he doesn't need to speak.

21 MR. SARVEY: Does he have a resume or declaration  
22 form or something?

23 STAFF COUNSEL WILLIS: No. He wasn't intended to  
24 provide testimony.

25 HEARING OFFICER CELLI: Well, let me ask you

1 this, folks. There would be -- if the parties will  
2 willing to stipulate to staff's testimony as it exists  
3 right now, which is Exhibit 301, right, only, then we  
4 would essentially freeze the record as what it is in the  
5 FSA.

6 MR. CARLTON: That would not include Mr.  
7 Vidaver's statement; correct?

8 HEARING OFFICER CELLI: That's right.

9 MR. CARLTON: I'll stipulate to that.

10 MR. SIMPSON: Wait. His comments are part of the  
11 record.

12 HEARING OFFICER CELLI: They're not. That's why  
13 I'm saying -- remember, early on, folks, that Mr.  
14 Wheatland suggested accepting testimony without any live  
15 testimony. In other words, accepting the written  
16 testimony only by stipulation. By doing that, you would  
17 have essentially frozen the record in the state it was at  
18 the time without taking additional testimony. I'm just  
19 inquiring as to whether if the parties are not interested  
20 in hearing from Mr. Vidaver, maybe they would be  
21 interested in stipulating to the testimony being received  
22 on the written record only without any live testimony. So  
23 can I just quickly a show of hands is there anybody who  
24 would object to that at this time?

25 MR. SARVEY: Yes, I would. I don't even

1 understand the question.

2 MR. CARLTON: That doesn't mean no  
3 cross-examination, right?

4 HEARING OFFICER CELLI: That would have meant no  
5 cross-examination, but since we don't have this  
6 stipulation, we're just going to go forward now.

7 MR. CARLTON: As I understand it, there is no  
8 testimony of Mr. Vidaver that's being offered.

9 STAFF COUNSEL WILLIS: That's correct.

10 MR. SIMPSON: And the comments are Mr. Vidaver?  
11 Are they in the record or not?

12 MR. SARVEY: I don't have any problem stipulating  
13 to his no testimony. But I want to cross-examine Mr.  
14 Hoffman.

15 HEARING OFFICER CELLI: Okay.

16 STAFF COUNSEL WILLIS: Mr. Hoffman is here and  
17 ready to go.

18 HEARING OFFICER CELLI: Any further direct on  
19 alternatives by staff?

20 STAFF COUNSEL WILLIS: I haven't actually  
21 started, but I will.

22 HEARING OFFICER CELLI: Go ahead.

23 MS. JENNINGS: Can I just -- Jennifer Jennings,  
24 Public Adviser. Everybody has to identify themselves  
25 because I'm getting calls from people on the line. I'm a

1 little confused about what the status of Mr. Vidaver's  
2 written statement --

3 HEARING OFFICER CELLI: Let me make it really  
4 clear, okay. I have a prehearing conference statement.  
5 The applicant was going to call Doug Urry. The staff was  
6 calling David Vidaver and Craig Hoffman. Rajesh Dighe was  
7 calling Bill Powers and Robert Sarvey. Sierra Club is  
8 calling Edward Mainland. Robert Sarvey is calling Bill  
9 Powers and Roberts Sarvey and Jass Singh is calling Bill  
10 Powers and Robert Sarvey. Is that what -- that is the  
11 state right now. That's the expectation based on the  
12 prehearing conference.

13 MS. JENNINGS: What is the state of Mr. Vidaver's  
14 written comment that was circulated for information only?

15 HEARING OFFICER CELLI: Comments only. So it has  
16 not been received --

17 MS. JENNINGS: So he has no filed testimony?

18 HEARING OFFICER CELLI: That as right. But he's  
19 called as a witness so he can testify. He was in the  
20 prehearing conference.

21 MR. SIMPSON: These comments, are they public  
22 comments? What kind of comments are they?

23 HEARING OFFICER CELLI: Did you -- are they  
24 docketed?

25 STAFF COUNSEL WILLIS: I'm not intending on



1 asking Mr. Vidaver any questions. He was here at the  
2 pleasure of the Committee if there were any additional  
3 questions based on the reversal of the ruling at the  
4 prehearing conference. So because the information was  
5 denied --

6 HEARING OFFICER CELLI: On need.

7 STAFF COUNSEL WILLIS: Originally. And then  
8 reversed, he's here if there is a question about what  
9 staff does. But staff doesn't perform a need analysis,  
10 but he won't be asking questions on a need analysis  
11 because it wasn't performed.

12 HEARING OFFICER CELLI: Okay. But Mr. Vidaver's  
13 presence was noticed in the prehearing conference.

14 STAFF COUNSEL WILLIS: Correct.

15 HEARING OFFICER CELLI: Okay. So with that, I  
16 hope that cleared that up. It's comment only. It's not  
17 evidence. Whatever he had offered is not an exhibit. Mr.  
18 Vidaver's --

19 MS. JENNINGS: There's no pre-filed testimony for  
20 Mr. Vidaver.

21 HEARING OFFICER CELLI: Correct. So with that --

22 STAFF COUNSEL WILLIS: I'd like to ask Mr.  
23 Hoffman a few basic questions.

24 HEARING OFFICER CELLI: Please.

25 DIRECT EXAMINATION

1           STAFF COUNSEL WILLIS: Mr. Hoffman, was the  
2 statement of your qualifications adopted to your  
3 testimony?

4           MR. HOFFMAN: Yes, it was.

5           STAFF COUNSEL WILLIS: And could you briefly  
6 state your education and experience as it pertains to  
7 analyzing alternatives?

8           MR. HOFFMAN: I have a Master's of rural and town  
9 planning, and for the last 15 years have worked as a land  
10 use planner and a project manager, majority of those were  
11 in reviewing and analyzing and processing large scale  
12 plans. An alternatives analysis is much like a  
13 feasibility analysis to identify different aspects of the  
14 project that make it feasible to move forward, different  
15 alternatives that you can use in developing the project.  
16 It's like a streaming report. It's something I've been  
17 working on for like the last ten years.

18           STAFF COUNSEL WILLIS: Are you sponsors the  
19 testimony entitled, "Alternatives and Supplemental Staff  
20 Assessment" marked Exhibit 301?

21           MR. HOFFMAN: Yes, I am.

22           STAFF COUNSEL WILLIS: Do you have any changes to  
23 your testimony?

24           MR. HOFFMAN: No, I don't.

25           STAFF COUNSEL WILLIS: Do the opinions contained

1 in your testimony represent your best professional  
2 judgment?

3 MR. HOFFMAN: Yes, they do.

4 STAFF COUNSEL WILLIS: I'd like to have this  
5 witness be available for cross-examination.

6 HEARING OFFICER CELLI: Thank you. Applicant,  
7 did you want to ask the last set so I should go directly  
8 to Mr. Sarvey or did you want to ask some questions?

9 MR. WHEATLAND: Well, we're not adverse. We'll  
10 not be asking questions of this witness.

11 HEARING OFFICER CELLI: Mr. Sarvey?

12 MR. SARVEY: Mr. Hoffman, on page 6-1 of your  
13 testimony, it states that the applicant provided an  
14 analysis of the proposed project site and two alternative  
15 sites as possible locations for the proposed project and  
16 site screening criteria that was used to eliminate  
17 alternative locations. In analyzing the alternatives  
18 sites, did staff consider any brown field sites?

19 MR. HOFFMAN: Not within this area, no.

20 MR. SARVEY: To your knowledge, is it a priority  
21 of the State to use brown field sites for new crop  
22 generation?

23 MR. HOFFMAN: Staff utilized the project  
24 description and objectives from this power plant proposal,  
25 and based upon those objectives and the project

1 description, staff did not look at any other brown field  
2 sites below indicated out of this region.

3 MR. SARVEY: So would it be your testimony that  
4 the objectives of the applicant are more important than  
5 the objective of the state of California?

6 MR. HOFFMAN: No. That's not what I said.

7 MR. SARVEY: What did you say?

8 MR. HOFFMAN: I said staff reviewed the  
9 objectives of the applicant along with the project  
10 description and did an analysis based on the project as  
11 proposed.

12 MR. SARVEY: Did you review the objectives of the  
13 State of California in terms of utilizing brown fields  
14 sites over green field sites?

15 MR. HOFFMAN: The Energy Commission staff is  
16 relatively limited in the fact that we analyze a project  
17 as proposed. And as it's submitted. And we are limited  
18 from having the authority to require the Mariposa Energy  
19 Project to move to a proposed location other than what  
20 they proposed and even if they did, even if we identified  
21 an alternative site that may be meets the project  
22 objectives and lessons any of significant impacts on the  
23 project, that would require a completely new application  
24 for certification. Staff reviewed the project as  
25 proposed. Your question didn't look at any brown field

1 sites away from the project location, because that was not  
2 the project that was proposed to us.

3 MR. SARVEY: So the objectives of the State in  
4 terms of using brown field is irrelevant to your analysis?

5 STAFF COUNSEL WILLIS: Objection. Argumentative.

6 HEARING OFFICER CELLI: Sustained.

7 MR. SARVEY: Okay. What is the purpose of the  
8 alternative sites analysis that the Commission does not  
9 have the authority to require an alternative site?

10 MR. HOFFMAN: Staff takes a look the see if there  
11 are any alternative sites that could reduce the impacts  
12 proposed by the project. However, ultimately, the Energy  
13 Commission has the ability to either approve a project or  
14 deny a project. Whether they do that, we're trying to  
15 provide as much information as we possibly can. Whether  
16 or not they take a look at that alternative information  
17 and make the decision we should deny this project because  
18 ultimately it could be built someplace else, that's up to  
19 them to make that call. And we provide them that  
20 information.

21 MR. SARVEY: So it's your brief then that the  
22 Commission has no authority to require an alternative site  
23 to be utilized?

24 STAFF COUNSEL WILLIS: I'm going to object. It  
25 calls for a legal opinion.

1 HEARING OFFICER CELLI: Sustained.

2 MR. SARVEY: Page 6.1 of your testimony states,  
3 "staff determined these alternative sites would not reduce  
4 or eliminate environmental effects of the proposed  
5 project. As the proposed site would be more advantageous  
6 over the alternative sites because the potential  
7 agricultural and biological impacts resulting from the use  
8 of the alternative sites for the MEP."

9 Don't all of these sites have agricultural and  
10 biological impacts?

11 MR. HOFFMAN: Some of the agriculture sites  
12 (inaudible) let me turn to alternatives table 1 on page  
13 6-11 identify a number of screening criteria in which you  
14 take a look at the different zoning designations, is the  
15 project consistent with the zone, whether agricultural  
16 contracts on it is located on prime farmlands. In this  
17 case of this project, all three -- the project site and  
18 the two alternative sites are not located on prime farm  
19 land. However, if you look at -- if you look at  
20 alternative one, which is I believe the Castantaz site,  
21 there are water features within that area that could have  
22 a potential higher bio impacts and on Alternative 2 which  
23 is the Gomez site, there are other features that could  
24 have other impacts as well. Taking a streaming look at  
25 it, it's about a wash.

1           But I think the bigger point staff would like to  
2 are raise here, staff works very close coordination with  
3 all the other technical sections. And in regard to the  
4 MEP project, staff did not identify any significant  
5 adverse impacts that would require any type of  
6 alternatives or changes to the project to lower those  
7 impacts. So though I did an alternatives analysis on this  
8 project, what about looking to make it proposing  
9 modification, because there aren't any significant impacts  
10 to mitigate for.

11           So to (inaudible) the site or the configuration  
12 of the project, you can lessen any impacts because they're  
13 already below a significant level. And I think staff is  
14 constrained in that the only Conditions of Certification  
15 that we can place on the project is where we found that  
16 there are significant impacts if those Conditions of  
17 Certification are necessary to mitigate those impacts to  
18 below and threshold level. Since all the other technical  
19 sections identified there wouldn't be a significant  
20 impact, we had certification of conditions in place. We  
21 didn't need to identify any alternatives to the project.

22           MR. SARVEY: And all the sites that you analyzed,  
23 was it your opinion that all of the impacts could be  
24 mitigated on all of the sites and that's why you chose the  
25 MEP site or was there something special about the MEP site

1 other than the applicant proposed it?

2 MR. HOFFMAN: Again, staff isn't looking at any  
3 alternative sites, although I did a screening level  
4 analysis of both the Costanza alternative sited location  
5 one and the Gomez alternative site location two, this is  
6 the key point. Technical staff in all the various  
7 sections did not identify any significant impacts. If  
8 there isn't a significant impact to any aspect of the  
9 project, we're not going to propose an alternative to it  
10 because it's already mitigated below a significant level.  
11 So when you say why didn't you ask to put it on an  
12 alternative site, we didn't because there wasn't a  
13 significant impact. We wouldn't have proposed any  
14 alternative sites there, if that makes sense.

15 MR. SARVEY: I guess my question is -- I'll  
16 rephrase it. Did you determine that the other sites had  
17 impacts that couldn't be mitigated and that's why you  
18 chose that site? Or do you feel that all the sites have  
19 the same impacts and they could all be mitigated?

20 MR. HOFFMAN: I think my professional opinion  
21 would be the three sites that I looked at are all about a  
22 wash. They would all have roughly the same impact. But  
23 because there wasn't a significant impacts from the  
24 various technical sections, staff's not looking to make  
25 any alternatives to the project.



1 MR. SARVEY: Thank you for that.

2 On page 6-13, staff states that, "Therefore the  
3 Mountain House Community Services District wastewater  
4 treatment plant is not expected to have recycled water  
5 supply available for use at the MEP." Has the staff asked  
6 Mountain House if they would be willing to provide 187  
7 acre feet for the MEP?

8 MR. HOFFMAN: I think one of the --

9 MR. SARVEY: Recycled water. Excuse me.

10 MR. HOFFMAN: Sure. No, I have not asked the  
11 Mountain House Community Service District whether they  
12 would have the water at this point in time. I think if  
13 you keep on moving onto page 6-14, alternative water  
14 supply conclusions, the big concerns the staff had was the  
15 project as proposed is currently in the BBID area for  
16 providing water service. They're not in the area for  
17 Tracy, the city of Tracy to provide water. They're not  
18 within the Mountain House Community Service District to  
19 provide water. And there is a jurisdictional concern.  
20 You have a facility that is in Alameda County that has  
21 water provided by BBID. And then you start looking at  
22 water supplies that are actually within San Joaquin  
23 county. That water supply is part of San Joaquin County,  
24 their local agency formation commission completed a  
25 municipal service review and identified the services and

1 facilities that would take place within the Mountain House  
2 Community Service District.

3           When you start looking at taking water from San  
4 Joaquin County in this jurisdiction, now you're going to  
5 take that water across the jurisdictional boundary line  
6 into Alameda County. You'd need to modify that  
7 jurisdictional boundary with Mountain House, do some type  
8 of environmental review through the San Joaquin County  
9 LAVCO. But not only through San Joaquin County, because  
10 now you have to do it in Alameda County, too. You're  
11 extending a facility into another county that currently  
12 doesn't have that service.

13           So I think staff is looking at the alternative  
14 water supplies. And I think I gave a lot of thought to  
15 the Warren Alquist are coming from the city of Tracy,  
16 water coming from the Mountain House Community Service  
17 Districts.

18           In the end, I can't get over that jurisdictional  
19 boundary, although the Energy Commission definitely has  
20 the ability to license a facility like this, we can't  
21 change jurisdictional boundaries and what types of water  
22 or facilities are allowed or approved. That's up to the  
23 local agency formation commission.

24           MR. SARVEY: So have you seen the Commission  
25 by --

1           MR. BOYCE:  IS they have a recycled water plan?

2           MR. HOFFMAN:  They did submit some information  
3 they were looking towards doing something like that or  
4 something in the future would take place.

5           MR. SARVEY:  And is there jurisdictional issues  
6 at BBID supplies Mountain House's recycled water?

7           MR. HOFFMAN:  It would be BBID supplying that  
8 water.  I don't know contractually how that would work.  I  
9 think the bigger item right now with the MEP project and  
10 what was proposed by the applicant if this was part of a  
11 response to you in the supplemental staff assessment is  
12 part of page 6-er 21, the applicant is going to work with  
13 BBID to basically make facility improvements and come up  
14 with a water conservation plan to make improvements to  
15 ditches, whatever needs to be done that the actual water  
16 use after these improvements are done it's net use of  
17 zero.  So staff's looking at this project right now and  
18 again this will be further discussion later this afternoon  
19 in the water and soils section.

20           But my review of this project is it's water use  
21 of zero, because basically any water that's used by BBID  
22 now compared to after the project will be zero.  So there  
23 won't be -- there will be water use for the project, but  
24 with the improvements in the conservation plan, it's a net  
25 zero water use project.

1           MR. SARVEY: How does providing a \$1,000 per acre  
2 foot ensure that it will be a zero use of water?

3           MR. HOFFMAN: That goes to the -- again, that  
4 goes back to the soil and water section. But I think that  
5 is an option. I think what staff's looking for is to come  
6 up with a program in which water use is zero.

7           MR. SARVEY: So does the \$1,000 an acre foot  
8 ensure the water use is zero?

9           STAFF COUNSEL WILLIS: I'm going to object.  
10 Outside the scope of his testimony. He's already stated  
11 it's in the water and soils section.

12          HEARING OFFICER CELLI: Let me ask, because he's  
13 been talking a little bit about water and I want to know  
14 if this is in your field of expertise, Mr. Hoffman.

15          MR. HOFFMAN: I would have to defer to Mark  
16 Lindley later this afternoon. I don't exactly have that  
17 condition in front of me.

18          But the goal toying actually come up with a zero  
19 water use for this project.

20          HEARING OFFICER CELLI: You may want to save that  
21 question for the soil and water later. Thanks. Go ahead.

22          MR. SARVEY: Would the use of recycled water  
23 ensure a goal of zero water use from fresh water?

24          MR. HOFFMAN: You might come up with the zero  
25 water use, but you're probably going to create greater

1 environmental impacts by trying to get that recycled water  
2 to the site. You're going to have to provide some type of  
3 pipeline there's going to come from some off site source.  
4 So I think if you can make actual improvements to district  
5 facilities, that would be the least environmentally  
6 intrusive conservation program can you do.

7 MR. SARVEY: Does the use of the fresh water from  
8 BBID also involve a pipeline in environmental impacts?

9 MR. HOFFMAN: That is the least amount of  
10 improvement necessary to serve the site. You're talking  
11 about a 1.8 mile line, the majority of that line is on  
12 BBID property as opposed to a line from the Mountain House  
13 Community Service District is going to be -- I'm trying  
14 to get to that line, at least 5.5 miles. Some of that  
15 crossing through the Byron highway in which we had letters  
16 from the Chevron oil company, their environmental  
17 department with concerns about existing facilities already  
18 within that Byron highway and the environmental impacts of  
19 what those lines might do. So I think providing water  
20 within the BBID area in that 1.8 mile pipeline, that's the  
21 minimum amount of environmental impact that you can serve  
22 this project.

23 MR. SARVEY: Isn't there already an  
24 interconnection from the Mountain House wastewater  
25 treatment plant to the out fall at BBID's out fall?

1 MR. HOFFMAN: I don't know that.

2 MR. SARVEY: If Mountain House made their water  
3 available at 187 acre feet, would staff require it?

4 STAFF COUNSEL WILLIS: I'm going to object again.  
5 This is outside the scope of this alternatives --

6 MR. SARVEY: Soil and water?

7 STAFF COUNSEL WILLIS: I wish we could have that  
8 here with this panel.

9 HEARING OFFICER CELLI: Since you're withdrawing  
10 the question --

11 MR. SARVEY: No, I'm not withdrawing it.

12 HEARING OFFICER CELLI: Okay, because I'm not  
13 really clear. The objection is this is outside the scope  
14 of his expertise. His answer already was I don't think, I  
15 thought. Am I confusing you with your last question?

16 STAFF COUNSEL WILLIS: There's been several of  
17 questions that have been on water and soil that he's  
18 answered and answered he didn't know. But --

19 HEARING OFFICER CELLI: So I'm sorry, but I'm  
20 getting confused.

21 MR. HOFFMAN: Currently, we have the proposal on  
22 hand for this project is that the applicant is going to  
23 work with BBID to come up with some type of conservation  
24 program within the district's facilities (inaudible)

25 HEARING OFFICER CELLI: But wasn't the question

1 having to do with Mountain House's recycled water? I  
2 thought Mr. Sarvey, didn't you --

3 MR. SARVEY: Yes. I asked if Mountain House made  
4 the 187 acre feet available. Committed they provide it,  
5 would staff require it that was my question.

6 STAFF COUNSEL WILLIS: And my objection was it's  
7 outside the scope of the alternatives analysis. He's  
8 looking at the alternative analysis not as opposed to  
9 water and soil.

10 HEARING OFFICER CELLI: Mr. Hoffman, do you --  
11 don't answer it yet. Just tell me whether you have --  
12 it's within your expertise to answer the question whether  
13 187 acre feet of recycled water was made available for  
14 Mountain House Community Services District would staff  
15 require that and I want to know if that's a question for  
16 you or for soils and water later.

17 MR. HOFFMAN: If you're asking that question  
18 specifically what does that require as part of the  
19 alternatives analysis, I reviewed that. That means that  
20 you'd be building a 5.5 mile pipeline for the Mountain  
21 House Community Services District, the existing wastewater  
22 treatment site to the power plant. Staff did not find  
23 that that was environmentally advantageous for them to do  
24 a conservation program within the district that by making  
25 changes and modifications to the BBID making channels or

1 making improvements that would essentially make water use  
2 zero, that's not environmentally advantageous from an  
3 alternatives standpoint.

4 HEARING OFFICER CELLI: So we just got the  
5 alternatives answer. I just want to ask one question.  
6 Mr. Petty, did we get all that? Okay. Good.

7 Go ahead, Mr. Sarvey.

8 MR. SARVEY: In your analysis, Mr. Hoffman, did  
9 you consider any alternative pollution control  
10 technologies?

11 MR. HOFFMAN: No, I did not.

12 MR. SARVEY: On page 6.21 of your testimony, you  
13 dismissed the use of dry low NOx combusters, even though  
14 they eliminate two-thirds of the project's water  
15 consumption. Why?

16 MR. HOFFMAN: Again, your questions and your  
17 analysis, you take place -- your questions occur after a  
18 point I've already reached, and that is staff did not  
19 identify an air quality and water quality any significant  
20 adverse impacts to the environmental. So we're not asking  
21 for any modifications to the project. So looking at these  
22 technology improvements, staff can't require modifications  
23 to a project in which significant impacts don't already  
24 occur.

25 MR. SARVEY: So two-thirds of the project's water



1 consumption being used for NOx control is not a  
2 significant impact?

3 MR. HOFFMAN: The impact is actually the water  
4 use. And if the applicant, BBID, is working out a  
5 conservation program in which after every thing is said  
6 and down, you have a net zero water use, well, there is no  
7 water use.

8 MR. SARVEY: I don't ask that question again.

9 You were present when we did the air quality  
10 testimony the other day?

11 MR. HOFFMAN: Yes, I was.

12 MR. SARVEY: And did you hear the testimony of  
13 the bay area air quality management district  
14 representative who testified that using dry low NOx  
15 combustors would reduce the particular emissions by .56  
16 pounds per hour?

17 MR. HOFFMAN: Did you consider that when you  
18 rejected the dry low NOx combustors?

19 STAFF COUNSEL WILLIS: I'm going to object. He's  
20 asked and answered how he does his alternatives analysis  
21 based on the fact of whether or not the staff has  
22 determined there's already a significant adverse impact  
23 from the particular proposed project.

24 HEARING OFFICER CELLI: I thought the question  
25 was specific to a technological alternative. You're

1 talking about a technological alternative. Is that how  
2 you understand the question?

3 MR. SARVEY: Yes. I'm talking about dry low NOx  
4 combustors.

5 HEARING OFFICER CELLI: So I'm going to overrule  
6 it, because I think that's within alternatives expertise.  
7 And if it's not, just let us know.

8 MR. HOFFMAN: And that's fine. When it came to  
9 the technological improvements of the project, our Energy  
10 Commission staff inefficiency, reliability, facility  
11 design, they did their analysis. And again, in order to  
12 require any type of technological modifications to the  
13 project, staff would have first had to have found some  
14 type of significant environmental impact to whether it be  
15 air quality, efficiency design, reliability, or without  
16 finding those impacts, we couldn't get there from an  
17 alternatives aspect. I can't require any changes to the  
18 project without there being a significant impact. So I  
19 think when you're asking for some type of changes that  
20 would have reduced air quality impacts, they were already  
21 below the threshold. So I didn't get there.

22 MR. SARVEY: So you can't -- you can't make them  
23 change it, but you can recommend changes to the  
24 Commission; is that correct?

25 MR. HOFFMAN: Staff does an analysis. And if we

1 find impacts that are greater than significant, we require  
2 Conditions of Certification. I don't believe that I would  
3 be recommending any improvements to a project if it didn't  
4 require any Conditions of Certification. That's where  
5 staff is really at the core what our analysis is all  
6 about. If we fell into significant impacts, we require  
7 Conditions of Certification. If we don't, we don't  
8 require conditions on a project.

9 HEARING OFFICER CELLI: So it sounds like they  
10 don't make gratuitous recommendations. What was your  
11 question?

12 MR. SARVEY: I find that odd, but okay. I  
13 thought that was their job.

14 On page 6-4 of staff's testimony it states that  
15 the MEP's primary objective is to provide dispatch able  
16 operationally flexible and efficient generation to meet  
17 PG&E's need for new energy sources. PG&E issued a request  
18 for offers on April 1st, 2008, indicating that additional  
19 peak electric generation capacity is needed in this  
20 vicinity. Have you read PG&E's all source long term  
21 request for offers?

22 MR. HOFFMAN: No, I haven't.

23 MR. SARVEY: (inaudible).

24 HEARING OFFICER CELLI: Say again.

25 MR. SARVEY: I have a copy of the all source

1 request for offers here, and I would like Mr. Hoffman to  
2 show me where in this document PG&E specifies a vicinity  
3 where they're seeking generation.

4 HEARING OFFICER CELLI: Is this the document he  
5 just said he hadn't read?

6 MR. SARVEY: This is the document he references  
7 in his testimony that he has used to justify the need for  
8 this project. In other words, around the no project  
9 alternative. And this is the document here that he  
10 references, but he said he's never read it. I wanted to  
11 provide it to him and have him show me where it says in  
12 this document that PG&E specifies any vicinity for this  
13 generation.

14 HEARING OFFICER CELLI: I'm not going to sit  
15 around and wait for him to read this document.

16 Let me ask you this. Are you familiar with this  
17 document? By the way, is that an exhibit, Mr. Sarvey?  
18 One of your exhibits?

19 MR. SARVEY: No, it's not an exhibit at this time  
20 and I'm not going to offer it because I didn't bring 15  
21 copies. But I would offer it if I had.

22 HEARING OFFICER CELLI: What page does he  
23 reference it?

24 MR. SARVEY: He references it -- it's in relation  
25 to the no project alternative. Page 6-4 of staff's

1 testimony.

2 HEARING OFFICER CELLI: Thank you. So at 6-4 he  
3 made reference to that document, Mr. Hoffman, is that  
4 right?

5 MR. HOFFMAN: Sure. Why don't I give a better  
6 description of 6.2 project description and setting and may  
7 be 6-4 which is basic objectives of the project. My  
8 college professors would cringe, but it's a copy and paste  
9 job. I take it straight out of the AFC. They describe  
10 what the project is. They describe exactly what their  
11 project alternatives are. And that's exactly what we use  
12 within our documents. We don't tell the applicant what  
13 their objectives are or what their project is. We use  
14 their information and that's how we analyze the project  
15 and how I analyze the objectives to this -- not  
16 objectives, but alternatives to this project. So have you  
17 ever seen that document, no. Was basic objectives as it's  
18 written on 6-4 and goes on to 6-5 it's copied from the  
19 AFC.

20 HEARING OFFICER CELLI: Does that help, Mr.  
21 Sarvey?

22 MR. SARVEY: It helps, but it's not an answer.  
23 But yeah, it helps.

24 So your testimony is that Mariposa says that PG&E  
25 indicates that there is additional peak electrical

1 generation capacity need in this vicinity. It's not PG&E  
2 that says that; correct?

3 MR. HOFFMAN: I take this information that you're  
4 reading on 6-4 straight out of the application for  
5 certification.

6 MR. SARVEY: So it's Mariposa that's saying that,  
7 not PG&E; correct?

8 MR. HOFFMAN: I picked it out of the AFC. It's  
9 the applicant's document.

10 MR. SARVEY: I just need to give him the document  
11 and let him look through it, Mr. Celli.

12 HEARING OFFICER CELLI: You know, I wonder if  
13 this would be a good time for us to have Mr. Urry come  
14 back and let him answer the question if he was the source  
15 of the reference that he used from the AFC into the --

16 MR. SARVEY: I don't really want to open that up.  
17 I'd rather leave the applicant's witness on the side and  
18 have staff's witness testify to his independent review of  
19 this project.

20 HEARING OFFICER CELLI: All right. Let's do  
21 this, because I really -- ask the other questions that you  
22 have that don't require him to read the tone, and then  
23 we'll circle around.

24 MR. SARVEY: All right. Unless you want to  
25 accept my statement that there is none. But we can save a

1 lot of time.

2 HEARING OFFICER CELLI: Well, let's save some  
3 time. What is the statement? May be we can get to that.

4 MR. SARVEY: The statement is that PG&E's offer  
5 here says that they need the MEP or some other generation  
6 in the vicinity where the MEP is. And in fact, this  
7 document doesn't say anything like that. It's not in  
8 there anywhere. This document calls for 800 to 1200  
9 offers. 800 to 100 megawatts of offers and it's basically  
10 they're looking for the cheapest offer, not so much  
11 location. They're looking for the best deal for the rat  
12 pair. And this dock. Doesn't specify vicinity for  
13 generation in any way, shape, or form. I'm asking Mr.  
14 Hoffman about his independent evaluation of this document  
15 because he has --

16 HEARING OFFICER CELLI: He says he hasn't done  
17 one.

18 MR. SARVEY: But what I'm saying is that's one of  
19 the primary statements he makes that this project is  
20 needed. And I'm saying --

21 STAFF COUNSEL WILLIS: I'm going to object to  
22 that characterization. He doesn't say that the project is  
23 needed. If he's referring to 6-4, I'd like Mr. Sarvey to  
24 direct us to exactly the sentence, because I'm not sure  
25 I'm reading all of the information that he's claiming is

1 in here. I don't see him signing to that document or --

2 MR. HOFFMAN: Are you quoting from the last  
3 paragraph on page 6-4 where it starts MEP would provide a  
4 resource balance?

5 STAFF COUNSEL WILLIS: As Mr. Hoffman said, if  
6 these are the objectives that the project proponent has  
7 put out there, --

8 HEARING OFFICER CELLI: Now, page 6-4. What  
9 paragraph? The bullet point?

10 MR. HOFFMAN: Where it starts MEP would provide a  
11 resource to balance --

12 STAFF COUNSEL WILLIS: And I guess my question is  
13 where does it say in the vicinity of the project site?

14 MR. SIMPSON: Next page, 4.2.

15 HEARING OFFICER CELLI: Okay. So I'm reading  
16 this paragraph, Mr. Sarvey. And PG&E issued a request for  
17 offers on April 1st, 2008, to obtain these energy  
18 resources from qualified bidders. There's also -- are you  
19 getting to the point where he says has identified a near  
20 term need? What is university this paragraph that refers  
21 back to the document that you want him to read? I'm not  
22 seeing it. The statement is MEP would provide a resource  
23 to balance the variability of renewable resources to  
24 satisfy peak energy and capacity needs during high load  
25 event and to support the electrical grid during outages of



1 transmission lines and other generating facilities. PG&E  
2 has identified a near term need for new power facilities  
3 that can be online by or before 2015 and that can support  
4 easily dispatchable and flexible systems of operation.

5 PG&E issued a request for offers on April 1st,  
6 2008, to obtain these energy resources from qualified  
7 bidders. MEP's objectives are consistent with the need as  
8 follows. And then he goes on and explains how he finds  
9 it's consistent. What I'm trying to figure out is the  
10 near reference of PG&E's request for offers on April 1st,  
11 2008, which is what I take it is the document --

12 MR. SARVEY: No. No. You're reading the wrong  
13 sentence. After the first bullet on that page, it says  
14 MEP's primary objective is to provide dispatchable,  
15 operationally flexible and efficient generation to meet  
16 PG&E's need for new energy resources. PG&E issued a  
17 request for offers on April 1st, 2008, indicating that  
18 additional peak electricity generating capacity is needed  
19 in the vicinity. And he quotes PG&E 2008. But then he's  
20 telling us he got it from directly cut and paste. PG&E  
21 hasn't said that. That's what I'm challenging.

22 HEARING OFFICER CELLI: Okay. Well, I think  
23 that --

24 MR. SARVEY: It's bullet point two on the next  
25 page that says site the project within the Altamont wind

1 resource area.

2 HEARING OFFICER CELLI: In order to supply back  
3 up generation with local winds turbines, (inaudible)

4 MR. SARVEY: I'm not having an objection to that  
5 part of it. It's exactly what I'm quoting. I'm cutting  
6 and pasting like Mr. Hoffman did.

7 HEARING OFFICER CELLI: I'm at page 6-4.

8 MR. HOFFMAN: You know what? He's looking at the  
9 paragraph on the top of the page, not the bottom.

10 MR. SARVEY: And the next paragraph says exactly  
11 what I said.

12 HEARING OFFICER CELLI: You mean to evaluate the  
13 impacts of not constructing a project to determine --

14 MR. HOFFMAN: Right below that, the MEP's primary  
15 objective --

16 HEARING OFFICER CELLI: Sorry. Got a bum steer  
17 on that one.

18 MR. SARVEY: It's all right. It's confusing.

19 HEARING OFFICER CELLI: So it's siting PG&E 2008.  
20 That's what that document is.

21 MR. SARVEY: Yeah. He says PG&E 2008 as  
22 attributing that statement to PG&E, but then he says it's  
23 cut and paste from the applicant's. So I'm just -- does  
24 he know where in here it says that.

25 HEARING OFFICER CELLI: He doesn't. But I think

1 what we have in the record now is a qualification that  
2 that citation is via the PG&E 2008 citation is via the  
3 AFC. So there is --

4 MR. SARVEY: It's not out of this document.

5 HEARING OFFICER CELLI: Yes.

6 MR. SARVEY: And then I asked him to show me in  
7 this document where it's at and he says he's never read  
8 it.

9 HEARING OFFICER CELLI: And now I'm sure I've  
10 eaten enough of the clock that you probably could have  
11 read it about ten times by now. Let's move on, because --

12 MR. SARVEY: I think it's an important point, you  
13 know. I mean, what --

14 HEARING OFFICER CELLI: Well, if you really want  
15 to get to the truth, the truth would be from Mr. Urry,  
16 because he's apparently the author of that document. And  
17 if you're interested in the truth, let's call Mr. Urry up  
18 and let him explain --

19 MR. SARVEY: I'm interested in just clarifying  
20 that one statement. I'm not interested in anything Mr.  
21 Urry has to say or I would have asked to cross-examine  
22 him. I've read his testimony.

23 HEARING OFFICER CELLI: So this witness obviously  
24 isn't going to help you much.

25 MR. SARVEY: I'll move on.

1 HEARING OFFICER CELLI: Thanks.

2 MR. SARVEY: Thank you, Mr. Celli.

3 Do you know how many megawatts that PG&E's all  
4 source long term request for offer request?

5 MR. HOFFMAN: No.

6 MR. SARVEY: Your testimony says 800 to 1200  
7 megawatts; is that correct?

8 MR. HOFFMAN: Let me see what page --

9 HEARING OFFICER CELLI: What's the reference?  
10 Mr. Sarvey, where are we?

11 MR. SARVEY: Strike it. I have to go too far.

12 Do you have any idea how many megawatts PG&E  
13 ultimately procured from the 2000 long term procurement?

14 HEARING OFFICER CELLI: If you know.

15 MR. HOFFMAN: Well, I haven't read that document.  
16 Again, if you're saying I'm wrong because I copied it out  
17 of the AFC --

18 MR. SARVEY: I'm just asking you if you know how  
19 many megawatts PG&E did procure out of that.

20 MR. HOFFMAN: No.

21 MR. SARVEY: Do you know that the determination  
22 for this long term offer was based on the CEC's 2007  
23 California demand forecast?

24 STAFF COUNSEL WILLIS: I'm going to object. It's  
25 outside the scope of this witness's testimony.

1 HEARING OFFICER CELLI: What's the basis of the  
2 objection?

3 STAFF COUNSEL WILLIS: It's outside the scope of  
4 his testimony because he's already said he didn't review  
5 this document. And he's still asking questions based on  
6 that document.

7 MR. SARVEY: I'm asking questions about the no  
8 project alternative. That's what I'm asking, does he  
9 know -- he says this project is needed. I'm asking the  
10 question do you know how much was needed?

11 MR. HOFFMAN: I didn't say the project was  
12 needed?

13 MR. SARVEY: You didn't?

14 MR. HOFFMAN: Staff doesn't do a needs analysis.

15 MR. SARVEY: You defended the no project  
16 alternative, didn't you?

17 MR. HOFFMAN: The no project alternative is  
18 pretty simple.

19 HEARING OFFICER CELLI: Let me just say, the  
20 objection was overruled. Continue with this line of  
21 questioning. Go ahead.

22 MR. HOFFMAN: My no project alternative is pretty  
23 simple. The project is either approved by the Energy  
24 Commission or there is no project. If there is no  
25 project -- let me get this -- the selection of a no

1 project alternative would render all concerns about the  
2 project impact mute. No project alternative would  
3 preclude any construction or operation and then  
4 installation of new foundation, piping, or utility  
5 connections. If the no project alternative was selected,  
6 the construction and operational impacts of the proposed  
7 MEP would not occur. In the absence of MEP, however, the  
8 Monday generating corporation or another power company  
9 would likely propose the other power plant to be  
10 constructed or the PG&E transmission system to serve the  
11 demand that couldn't be met with the MEP. And that is  
12 from page 6-18.

13 HEARING OFFICER CELLI: Next question.

14 MR. SARVEY: You state that if the no project  
15 alternative was selected that the MEP or some other  
16 generator would likely propose (inaudible) plants?

17 MR. HOFFMAN: Yes.

18 MR. SARVEY: And what do you base that on?

19 MR. HOFFMAN: The Energy Commission gets projects  
20 all the time to provide energy facilities throughout the  
21 state of California to meet the needs of the growing  
22 demand of energy users. If it's not this project, we'll  
23 get another application for certification for another  
24 project coming in.

25 I mean, if you're asking me if this project isn't

1 built, is something going to propose a project right next  
2 door? I don't know that.

3 MR. SARVEY: Okay.

4 HEARING OFFICER CELLI: Mr. Sarvey, you've been  
5 going for 40 minutes. I'm going to ask that you --

6 MR. SARVEY: I've got a couple more questions.

7 HEARING OFFICER CELLI: Let's get to it.

8 MR. SARVEY: You state on 6-18 if the project was  
9 not built, the region would not benefits from the  
10 relatively efficient source of 200 megawatts of new  
11 generation at this facility; right?

12 MR. HOFFMAN: Yes.

13 MR. SARVEY: And are there other methods that  
14 relatively efficient source of energy could be provided  
15 outside of the MEP?

16 MR. HOFFMAN: Possibly. That would be  
17 speculation. I think looking at this power plants and  
18 looking at what the technical staff did in the sections of  
19 efficiency, reliability, they found that the project as  
20 proposed is relatively an efficient power plant. And so I  
21 use them as a resource and that's where that came from.  
22 But if you're looking at could another power plant be  
23 built someplace else that's as efficient as this power  
24 plant, yeah, I'm sure. I guess so.

25 MR. SARVEY: In your analysis, did you consider

1 the Mulqueeney ranch pump storage unit?

2 MR. HOFFMAN: No.

3 MR. SARVEY: In your analysis, did you consider  
4 combined cycle configuration called flex plan 10?

5 MR. HOFFMAN: Looking at it -- let me get to  
6 that. Looking at power generation alternatives, and  
7 working with again a lot of our technical staff, when we  
8 take a look at peaker plant situations, these are  
9 typically a simple cycle combustion turbine. And when you  
10 start looking at more of a base load facility, that is  
11 what I would consider more of a combined cycle that adds  
12 another opportunity for need to be used throughout the  
13 plant. It's more efficient, but it's more use for base  
14 load facility. I don't think you'd use that combined  
15 cycle for 200 megawatts.

16 MR. SARVEY: Are you familiar with the operating  
17 character representation particulars of the flex plant  
18 ten?

19 MR. HOFFMAN: No, I'm not.

20 MR. SARVEY: That's all my questions.

21 HEARING OFFICER CELLI: Thank you, Mr. Sarvey.

22 Mountain House, any questions? And you indicated  
23 previously that you did not, so you shouldn't.

24 Thank you.

25 Mr. Dighe, any questions on alternatives?



1 MR. DIGHE: Yes.

2 HEARING OFFICER CELLI: Go ahead. Please just  
3 ask the questions that haven't been asked already. Thank  
4 you.

5 MR. DIGHE: So did the applicant propose  
6 alternative sites other than the MEP flex ten and Gomez  
7 which got removed (inaudible) three remain in the  
8 application?

9 MR. HOFFMAN: The applicant only proposed the  
10 three sites. They looked at their project proposal and  
11 then the two alternative sites. I think as I started  
12 looking at this project, really you're doing this  
13 feasibility analysis. You take a look at the geography of  
14 the area. With this project, with the concerns that were  
15 raised by CalPilots and with the Byron airport to the  
16 north, you really wouldn't want to propose any sites to  
17 the north of this site. And then what the concerns of the  
18 Mountain House community district or the community or  
19 wouldn't want to propose any sites to the east. So you  
20 really start limiting the amount of sites that you can  
21 look at for alternative location. So you're really -- you  
22 start pushing any proposed sites further to the west up  
23 into the Altamont hills or further to the south and you  
24 start (inaudible) any type of lateral lines that you need.  
25 But just with the location as it is, it is about

1 as far south and about as far west as you can possibly get  
2 before you start going up into the hills where you have  
3 potential greater impacts to bio impacts or cultural. You  
4 don't know what's in these hills if they've been used. It  
5 really starts getting hard to find a relatively flat 20  
6 acre site to build this project at. So those were the  
7 sites I looked at through the screening analysis, it was  
8 hard to come up with too many sites, because it really was  
9 as far over to the base of the hills as you can possibly  
10 get it.

11 MR. DIGHE: Actually I was more interested in  
12 knowing if there were any sites further away from  
13 residential communities which were discussed between the  
14 applicant and the staff.

15 MR. HOFFMAN: No, there weren't. And again, we  
16 analyzed the project as it came forward. And that was  
17 locating close to the PG&E Kelso substation. If you'd  
18 look at doing a project, say, you know, four or five miles  
19 down the valley, that would be a different project. That  
20 wouldn't be this project.

21 HEARING OFFICER CELLI: So I think you've  
22 answered his question. Let's get moving.

23 MR. DIGHE: Is there a specific need to have the  
24 MEP on this location? It can be in some other county?  
25 Has that been discussed?

1           MR. HOFFMAN: Staff analyzed the project as  
2 proposed and it was proposed in this location and we've  
3 done our analysis. Whether or not it could take place in  
4 some different county, that's outside of my scope.

5           HEARING OFFICER CELLI: There's your answer.

6           MR. DIGHE: The 200 megawatt power generation,  
7 what are the alternatives like photovoltaic panels, were  
8 they considered in your analysis and were they considered  
9 as a part of your costing analysis as an independent staff  
10 analysis and -- yes or no?

11          MR. HOFFMAN: In looking on page 6-17, you look  
12 at fuel technology alternatives. And since the applicant  
13 was proposing a peaker plant, technologies like bio fuels  
14 or solar, those are peaking facilities. They take too  
15 long to ramp up. So when you start looking at -- and I  
16 know you've been very concerned about the green  
17 technologies. I wouldn't say that the solar plant or  
18 biomass goes or geothermal or hydro electric, those  
19 typically aren't a peaking source of power.

20          MR. DIGHE: So the peaking power is actually  
21 needed in summer. So I was -- the reason I asked the  
22 question was and since photovoltaic system was appropriate  
23 generation power during that specific time, the need for  
24 200 megawatts could be served through an alternative power  
25 generation technology; right? Peaker power plant --

1           HEARING OFFICER CELLI: Just ask one question at  
2 a time. So what's your question? Go ahead. Ask you  
3 answer the question?

4           MR. HOFFMAN: I think over the last year, the  
5 Energy Commission has seen the number of large scale solar  
6 projects coming forward. But I would consider more of a  
7 base load facility. I mean, 200 megawatts. We're talking  
8 about 2000 acres of land. And we are seeing those down in  
9 the Mojave desert. We just licensed eight of them, I  
10 believe.

11          HEARING OFFICER CELLI: Does that answer your  
12 question?

13          MR. DIGHE: Was an alternative of putting  
14 photovoltaic sales and residential and other (inaudible)  
15 building and then adding to may be San Joaquin County add  
16 up to \$20 million.

17          MR. HOFFMAN: We do take a look on page 6-15 you  
18 know conservation and demand and looking at different  
19 alternatives, you know, putting solar panels on the roofs  
20 of buildings as well as trying to conserve power and  
21 taking a look at using different types of ways to conserve  
22 power. But I don't think putting panels on a roof the  
23 volume that would take, that's not going to serve a  
24 peaking performance. I think focusing on the applicant's  
25 proposal was for peaking power plant. That really sets

1 the type of technology that can be used. It's going to be  
2 more of a natural gas fired power plant that uses some  
3 type of simple cycle combustion turbine. And its really  
4 does eliminate a number of technologies. And I think I  
5 tried to go through those on page 6-16 and 6-17.

6 HEARING OFFICER CELLI: So that would be yes in a  
7 round about answer.

8 MR. DIGHE: Did you consider the fact that solar  
9 panel costs are going down? So it's much more feasible to  
10 have peaking power generation?

11 MR. HOFFMAN: I didn't look at that.

12 HEARING OFFICER CELLI: Did or did not?

13 MR. HOFFMAN: Did not.

14 MR. DIGHE: Did you look at solar power  
15 generation and battery storage as a combination to natural  
16 gas peak power generation?

17 MR. HOFFMAN: I discounted solar and wind  
18 technologies on page 6-17 because that wasn't going to  
19 meet the peaking requirements of this project.

20 MR. DIGHE: Do you think now if you -- with the  
21 current situation, do you think there is a possibility of  
22 doing 200 megawatt power generation using non-natural gas  
23 firing power plant in California?

24 MR. HOFFMAN: I wouldn't know that.

25 MR. DIGHE: Okay. Are you aware of the fact that

1 Mountain House community is aligned towards solar AB 32  
2 initiative and love to have solar panels on their  
3 residential rooftops?

4 MR. HOFFMAN: I think that's been stated in a  
5 number of the workshops.

6 MR. DIGHE: Thank you.

7 HEARING OFFICER CELLI: Thank you, Mr. Dighe.

8 Mr. Wilson, did you have any questions with  
9 regard to alternatives?

10 MR. WILSON: Yes, I think I just have one.

11 Did the CEC staff contact east Altamont to find  
12 out what their intent was when they were going to  
13 construct the power plant since it's so close?

14 HEARING OFFICER CELLI: If you know, Mr. Hoffman.

15 MR. HOFFMAN: I did contact the CalPine  
16 corporation and actually sent out an e-mail to the over  
17 all POS list. I believe about two weeks ago prior to our  
18 meetings on the 24th and 25th what the current license to  
19 extend the east Altamont power plant. It identified --  
20 the extension was to allow for (inaudible) to either sell  
21 the property or sell the project or come up with a power  
22 purchase agreement. And that's what the extension was for  
23 and CalPine has not indicated that they're looking to  
24 built this project at this point in time.

25 HEARING OFFICER CELLI: Thank you, Mr. Wilson.

1           Mr. Singh?

2           MR. SINGH: Mr. Hoffman, you mentioned that  
3 because of the peaking requirement of the project you did  
4 not consider other alternatives. Can you explain to me  
5 what is a peaking requirements of the project are?

6           MR. HOFFMAN: Within the -- let me see. And let  
7 me go back to -- let me go back to basic objectives where  
8 I believed -- sorry. On page 6-4, it's the second  
9 paragraph right under basic objectives of the project.  
10 And this was from the AFC, a facility that provides  
11 peaking capacity must be up and running at peak generation  
12 within ten minutes to meet the California independent  
13 system operator requirements. So I was looking at peaking  
14 facilities, it was something that would come online very  
15 quick and be able to generate the power that was needed.

16           MR. SINGH: So it is only ten minutes or there is  
17 something else also in the peaking requirements of the  
18 project?

19           MR. HOFFMAN: I was using the basic objectives  
20 that the applicant provided.

21           MR. SINGH: So in your understanding you're  
22 saying that sale or power generation is not a peaking  
23 facility?

24           MR. HOFFMAN: That's correct.

25           MR. SINGH: Because it cannot turn on the power

1 within ten minutes?

2 MR. HOFFMAN: Well, and if a cloud goes over, you  
3 know, the power doesn't exist. There's a reliability  
4 issue as well. Solar is great whether the sun is out.  
5 But whether the clouds are overhead --

6 MR. SINGH: Did you do the analysis for like in a  
7 year for how many times the clouds are therein that area  
8 and the clouds are not there in the area?

9 MR. HOFFMAN: I did not, because again looking on  
10 page 6-17 at fuel technology alternatives, I dismissed  
11 solar and wind technologies as not meeting the  
12 requirements of the project.

13 MR. SINGH: What's the cost of putting the solar  
14 power plant to generate one megawatt?

15 MR. HOFFMAN: I don't know.

16 MR. SINGH: Did you do that analysis?

17 MR. HOFFMAN: No.

18 MR. SINGH: What is the cost of generating one  
19 megawatt for gas driven turbine power plant?

20 MR. HOFFMAN: I don't know.

21 MR. SINGH: Do you think that price and allowance  
22 need to be done before the alternate energy alternatives?

23 MR. HOFFMAN: It was done in the reliability and  
24 efficiency sections of the staff analysis. But I didn't  
25 do it.



1           MR. SINGH: Is there recycled water or the used  
2 water is more fertile for the lands?

3           HEARING OFFICER CELLI: If you know.

4           MR. HOFFMAN: I don't know that the properties of  
5 water --

6           HEARING OFFICER CELLI: The question was whether  
7 recycled water was more fertile for the land.

8           MR. HOFFMAN: I don't know that.

9           HEARING OFFICER CELLI: That's not his expertise.  
10 I think you're asking an awful lot of this witness.

11           MR. SINGH: Because what as happening is we are  
12 using recycled water for 180 acres and that impacts the  
13 agriculture lands around it because there is almost for  
14 (inaudible) water to be used for the land. And it is for  
15 the fact it's more for (inaudible).

16           STAFF COUNSEL WILLIS: Is there a question?

17           HEARING OFFICER CELLI: Are you getting to a  
18 question?

19           MR. SINGH: Yes. So his answer is no, right?

20           HEARING OFFICER CELLI: He doesn't know. That  
21 was his here.

22           MR. HOFFMAN: I don't know.

23           MR. SINGH: Okay. But do we consider in our  
24 analysis when we're using recycled water when is more  
25 fertile and if you're drawing that much water off of 180

1 acres lands of water that you'll impact the agriculture  
2 lands.

3 HEARING OFFICER CELLI: I've got -- Mr. Singh, is  
4 the question would the use of recycled water impact  
5 agricultural land?

6 MR. SINGH: Yeah.

7 HEARING OFFICER CELLI: Okay. Now is there an  
8 objection pending? Because I'm not sure this is relevant  
9 since they're not using -- as I understand, you're not  
10 using recycled water for the MEP.

11 MR. SINGH: Is the water recycled -- so whatever  
12 the water they're drawing from the Byron district, it is  
13 used water, right? It could be drainage water, isn't it?

14 HEARING OFFICER CELLI: No. It's not. They're  
15 not using wastewater recycled water.

16 MR. SINGH: Recycled water.

17 MR. HOFFMAN: It's raw open ditch water.

18 HEARING OFFICER CELLI: It's not recycled.

19 MR. SINGH: Open ditch water. Sorry my English.  
20 Sorry about that. So open ditch water. So is it more  
21 fertile than purified or recycled water?

22 HEARING OFFICER CELLI: If you know.

23 MR. HOFFMAN: I don't know.

24 HEARING OFFICER CELLI: It's not his expertise.

25 MR. SINGH: Do you know how many solar plants has

1 been put in California or across United States as compared  
2 to gas driven?

3 STAFF COUNSEL WILLIS: I'm going to object.

4 HEARING OFFICER CELLI: Sustained. It's beyond  
5 the scope.

6 MR. SINGH: That's it. Thank you very much.

7 HEARING OFFICER CELLI: Thank you, Mr. Singh.

8 Sierra Club, California, any questions of this  
9 witness?

10 MR. CARLTON: Yeah, I have just one question and  
11 Mr. Mainland has four or five questions.

12 HEARING OFFICER CELLI: Okay. Please.

13 MR. CARLTON: Written on page 6-18, the last  
14 paragraph, if no new -- this is the no project  
15 alternative. If no new natural gas plants were  
16 constructed reliance on older power plants may increase.  
17 These plants would consume for fuel and emit more air  
18 pollutants. In the near term more likely result as an  
19 existing plants, many of which produce higher levels of  
20 pollutants would operate more than they do now. Now we're  
21 talking about a peaker plants here. I don't understand  
22 how whether or not this peak are plants as built has any  
23 effect on whether older power plants that are not peaker  
24 plants (inaudible).

25 HEARING OFFICER CELLI: So you have a question in

1 that? Do you understand the question?

2 MR. CARLTON: What is the basis for your  
3 conclusion that not building a peaker plants will cause  
4 older power plants to run more since they are not peaker  
5 plants?

6 MR. HOFFMAN: If the peaker plant wouldn't be  
7 built, power would have to come from somewhere. So from  
8 my -- from the evidence I was looking at is that power is  
9 going to have to come from existing power plants and  
10 likely in the bay area those are some of the older power  
11 plants that are in operation right now.

12 MR. CARLTON: But peaker plants only run a little  
13 bit during the summer; right?

14 MR. HOFFMAN: But if this power plant wasn't  
15 built and that's your key point, this power plant doesn't  
16 exist, then it'd have to come from an existing power  
17 plant. And that's probably some older power plant that is  
18 already within the Bay Area. You're asking two questions.  
19 You want to see that coming from another peaker plants.  
20 Well, I can't guarantee there's another peaker plant that  
21 would provide that power. I'm saying there's probably an  
22 existing facility that would.

23 HEARING OFFICER CELLI: Go ahead, Mr. Mainland.

24 MR. MAINLAND: The staff lists the no project  
25 alternative states the regional -- if the project is not

1 built, the region will not benefit from the relatively  
2 efficient source of the new generation that MEP would  
3 provide.

4 What is the rated efficiency of this plant?

5 MR. HOFFMAN: I don't know. That was fully  
6 discussed within the efficiency and reliability sections  
7 of the staff assessment.

8 MR. MAINLAND: So you don't know that's the basis  
9 for your judgment, that the relatively efficient source --

10 MR. HOFFMAN: With my discussions with the --

11 MR. MAINLAND: You don't know what the efficiency  
12 is rated?

13 MR. HOFFMAN: I do not.

14 MR. MAINLAND: Would you say that -- are you  
15 familiar with energy action plan one and energy action  
16 plan two?

17 MR. HOFFMAN: No.

18 MR. MAINLAND: Are you aware that these plans  
19 talk about a loading order?

20 STAFF COUNSEL WILLIS: I'm going to object. He  
21 said he wasn't familiar with them.

22 HEARING OFFICER CELLI: Sustained. But I think  
23 that you can ask that question regarding loading order,  
24 Mr. Mainland, in a different way, without referring to  
25 energy action plan one or two.

1           MR. MAINLAND: Does the staff and CEC consider  
2 the loading order as an important factor in considering  
3 new generation?

4           MR. HOFFMAN: I'm sure CEC staff does in  
5 different technical sections. But I could be honest with  
6 you, I don't know what a loading order is.

7           MR. MAINLAND: So you've omitted loading order  
8 because you don't know what it is is that correct?

9           MR. HOFFMAN: Yes.

10          MR. MAINLAND: Are you familiar with what CEC  
11 Commissioner Julia Levens says in project hearing 09-AFC-2  
12 about the loading order?

13          MR. HOFFMAN: No.

14          MR. MAINLAND: May I refresh your memory?

15          HEARING OFFICER CELLI: I don't think you  
16 established he had any memory in the first place worth  
17 refreshing.

18          MR. MAINLAND: Let me ask it another way. Since  
19 you acknowledge that loading order CEC it's acknowledged  
20 and stipulated that loading order is important in  
21 considering new generation, would you take issue with  
22 Julia Leven's statement that "We do take this loading  
23 order very seriously, given the importance of addressing  
24 climate change. We do want to see the loading order  
25 followed."

1           STAFF COUNSEL WILLIS: I'm going to object to the  
2 context of that. We have no idea if that was in reference  
3 to analyzing an alternatives for this project or it was in  
4 some other --

5           HEARING OFFICER CELLI: Let me ask you something.  
6 I'm going to interrupt for a moment.

7           Ms. Willis, isn't loading order discussed  
8 somewhere in the staff's supplemental? I'm pretty sure  
9 isn't it in GHGs? It seems funny to me that loading order  
10 wouldn't be discussed somewhere in the supplemental staff  
11 assessment or in our staff assessment. Or maybe Mr.  
12 Wheatland would know is it in the AFC somewhere? It's got  
13 to be somewhere.

14           What I'm trying to do, Mr. Mainland, is get you  
15 to the right place who can actually answer that question.

16           MR. MAINLAND: Mr. Chairman, in the interest of  
17 time, I'll withdraw the question and proceed to another  
18 question if you don't object.

19           HEARING OFFICER CELLI: I have no objection. And  
20 I appreciate that. Thanks. Go ahead.

21           MR. MAINLAND: You've stated and I think the  
22 testimony is that this plant is needed to meet a growing  
23 demand; is that correct?

24           MR. HOFFMAN: I didn't testify to need.

25           MR. MAINLAND: You've stated today before us

1 several minutes ago that this plant is necessary to meet  
2 growing demand; is that not correct?

3 MR. HOFFMAN: I said that I copied out of the AFC  
4 the project description and project objectives.

5 MR. MAINLAND: So you have no independent  
6 judgment about demand?

7 MR. HOFFMAN: Nope.

8 MR. MAINLAND: So you didn't consult the latest  
9 CPUC information about demand, which is contained in a  
10 loading orders -- loading forecasts supplied by CEC to  
11 CPUC, LTPP proceeding?

12 MR. HOFFMAN: No, I didn't.

13 MR. MAINLAND: Do you know what those loading  
14 tables say for the CPUC area?

15 MR. HOFFMAN: No, I don't.

16 MR. MAINLAND: For the PG&E area?

17 MR. HOFFMAN: No, I don't.

18 MR. MAINLAND: Wouldn't that have been a normal  
19 thing for you to take into consideration in rejecting the  
20 no project alternative?

21 MR. HOFFMAN: Staff doesn't take a look at need.

22 MR. MAINLAND: Well, you're accepting a statement  
23 about growing demand, yet wouldn't it be normal to take a  
24 look at the latest information that bears on the supply  
25 and demand?



1           MR. HOFFMAN: Staff does not take a look at that.  
2 In fact, applications for certification come to the CEC  
3 without even having power purchase agreements. That's not  
4 something that we look at. We do an independent  
5 environmental analysis of the project at hand. And that  
6 is what our analysis has done.

7           MR. MAINLAND: Are you aware as has been stated  
8 in evidentiary testimony already of the surplus of  
9 generation available in the PG&E service territory?

10          MR. HOFFMAN: I don't know this information.  
11 Although I'm standing right next to somebody that does.  
12 If you want to jump in here, I have the expert right next  
13 to me.

14          HEARING OFFICER CELLI: Let me ask Mr. Mainland  
15 and Mr. Carlton, Mr. Vidaver can speak to that kind of  
16 information, but Mr. Hoffman obviously can't. So did you  
17 have more --

18          MR. MAINLAND: I withdraw my question.

19          HEARING OFFICER CELLI: All right.

20          MR. MAINLAND: You've stated that solar is not a  
21 peaking resource. Isn't it true that solar is available  
22 at the very time that electricity demands peaks during the  
23 day, especially in the summer?

24          MR. HOFFMAN: That demands what type of solar  
25 you're looking at. Some solar is roof mounted that goes

1 straight into distribution lines. Some solar is held over  
2 at a substation and goes into larger distribution  
3 facilities. Just because when it's hot or when the sun is  
4 out, that seems like when solar plants are generating the  
5 most power. That doesn't necessarily mean it's a peaking  
6 plant.

7 MR. MAINLAND: But you would agree that solar is  
8 available precisely at the time that demand peaks during  
9 the day; is that right?

10 MR. HOFFMAN: I would agree. But again, that  
11 doesn't make it a peaking plant.

12 MR. MAINLAND: You've stated that all the gas  
13 plants would be used more if MEP were not built; is that  
14 correct?

15 MR. HOFFMAN: They could be used more. That's  
16 speculation on my part. But, yeah, the existing gas fire  
17 power plants could be used more to supply the power that  
18 this wouldn't provide.

19 MR. MAINLAND: Would they be used more if the  
20 large surplus of generating capacity projected to grow is  
21 valid?

22 MR. WHEATLAND: Objection. Regarding the large  
23 surplus of capacity expected to grow assumes facts not in  
24 evidence.

25 HEARING OFFICER CELLI: Sustained. That's

1 sustained.

2 Go ahead with your next question, Mr. Mainland.

3 MR. MAINLAND: You stated that I believe is it  
4 true that you said greenhouse gas impacts -- greenhouse  
5 gas is no significant impact in your judgment of no  
6 significant impact of this plant?

7 MR. HOFFMAN: Mine? We did air quality on  
8 Thursday night and I think the technical staff identified  
9 that. But that's not my analysis.

10 MR. MAINLAND: So in dismissing the no build  
11 alternative, you did not reckon with how this plant's  
12 greenhouse gas performance would effect State reduction  
13 targets; is that correct?

14 MR. HOFFMAN: Again, looking at page 6-18, if you  
15 look at the second paragraph right under the no project  
16 alternative, selection of the no project alternative would  
17 render all concerns about project impact moot. The no  
18 project alternative would preclude any construction or  
19 operation and thus installation of new foundation, piping,  
20 or connections. You wouldn't have any impacts from a no  
21 project alternative with this project.

22 Now, speculation is power is going to have to  
23 come from somewhere, whether it comes from an existing  
24 base load facility or peaker facility somewhere in  
25 California or if a new facility would need to be built to

1 meet the demands, that's speculation. And from staff's  
2 standpoint, that's what the following three paragraphs  
3 identify on 6-18 that if this wouldn't be built, you would  
4 have to get power from somewhere.

5 MR. MAINLAND: Thank you, Mr. Chairman.

6 HEARING OFFICER CELLI: Thank you, Mr. Mainland.  
7 Mr. Simpson, please.

8 MR. SIMPSON: Thank you. The word need has been  
9 tossed around here. It occurs 22 times in your testimony.  
10 How much of your testimony is cut and copied from the AFC?  
11 May be a percentage, rough percentage?

12 MR. HOFFMAN: With the analysis within -- let me  
13 see. If we can go back to I would say under project  
14 description and setting where you start seeing the second  
15 paragraph on page 6-2, and sliding onto page 6-3 where you  
16 see the exact project description as well as what the  
17 project design features are, that's copied and the basic  
18 objectives of the project on page 6-4 to 6-5. The  
19 applicant's project description in their objectives for my  
20 analysis.

21 MR. SIMPSON: So the other 15 reference to need  
22 were your own, not cut and copied testimony?

23 MR. HOFFMAN: That's mine. I guess the question  
24 is how is the word need discussed in those.

25 MR. SIMPSON: I could read off the 22 references

1 to need in your testimony --

2 MR. HOFFMAN: Maybe I could make this really easy  
3 for you. I don't know if this project is needed. And I  
4 did not do a needs analysis of this project.

5 MR. SIMPSON: Okay.

6 HEARING OFFICER CELLI: And just for posterity,  
7 the parties ask the question and the witnesses answer the  
8 question. And it's not the other way around. And parties  
9 are not obligated to answer questions thrown back at them  
10 by a witness.

11 Go ahead, Mr. Simpson.

12 MR. SIMPSON: Would the region benefit by paying  
13 for generation that's not needed?

14 MR. HOFFMAN: I don't know.

15 MR. SIMPSON: So the existing plan is to use  
16 fresh water from the irrigation district. Do you know  
17 where that water comes from?

18 MR. HOFFMAN: No.

19 MR. SIMPSON: Do you know if it crosses any  
20 jurisdictional boundaries?

21 MR. HOFFMAN: The BBID district has different  
22 sub-regions and I do believe it goes into Contra Costa  
23 County water is provided in San Joaquin County and Alameda  
24 County. I think it hits all three areas.

25 MR. SIMPSON: Is any part of this project in San

1 Joaquin County?

2 MR. HOFFMAN: No.

3 MR. SIMPSON: No linears, nothing?

4 MR. HOFFMAN: No.

5 MR. SIMPSON: You mention that you wouldn't want  
6 to site the project to the east because of community  
7 concerns; is that correct?

8 MR. HOFFMAN: If you site it further to the east,  
9 you'd start locating this closer to the Mountain House  
10 community. And I also identified that you wouldn't look  
11 to site it further to the north because that would start  
12 moving it closer towards the Byron airport. So what  
13 you're left with is really the site at the base of the  
14 Altamont hills or you start moving it further to the south  
15 or to the west.

16 MR. SIMPSON: And so is there a proximity  
17 threshold? How far is it from the line that would be too  
18 close the Mountain House?

19 MR. HOFFMAN: The Mountain House community has  
20 identified that anywhere within about six or ten miles  
21 would be too close to their community. The threshold  
22 really isn't driven by staff. It's more driven by public  
23 participation and the out cry of the community.

24 MR. SIMPSON: So you consider that out cry when  
25 you -- you just said you wouldn't want to site it to the

1 east because of Mountain House's concerns.

2 MR. HOFFMAN: Correct.

3 MR. SIMPSON: And your concerns were voiced to  
4 you before you did your report and that's just today's  
5 assessment?

6 MR. HOFFMAN: It was voiced well early into the  
7 process. In fact, we had a very vocal Mountain House  
8 community that came to the first informational site  
9 visit -- was that October 1st in 2009. So I think the  
10 staff understood the concerns of the Mountain House  
11 community at this point in time. Enough to realize that  
12 as an alternative you wouldn't site the power plant closer  
13 to the community when they didn't want the power plant in  
14 the current location.

15 MR. SIMPSON: And you think those siting concerns  
16 are based on air quality concerns if the project didn't  
17 emit pollution --

18 STAFF COUNSEL WILLIS: I'm going to object.  
19 Calls for speculation on what the Mountain House community  
20 would want.

21 HEARING OFFICER CELLI: You know, I'm going to  
22 say if -- it does call for speculation. So I would  
23 sustain the objection. But what I would say is that you  
24 can ask him what kind of communications he's got from the  
25 Mountain House people and what his take away was.

1 MR. GROOVER: May I put input into that?

2 HEARING OFFICER CELLI: No, actually. Just  
3 please let this witness be cross-examined by this party  
4 and then we'll get around.

5 MR. SIMPSON: If the project either sequestered  
6 its emissions or didn't emit pollutants, do you believe  
7 that the Mountain House communities would have concerns  
8 about it being closer to them?

9 MR. HOFFMAN: Yes.

10 MR. SIMPSON: Is the project consistent with the  
11 zoning district?

12 HEARING OFFICER CELLI: Is that a zoning question  
13 like as in land use or how does that relate to  
14 alternatives?

15 MR. SIMPSON: It's in his testimony.

16 HEARING OFFICER CELLI: What page?

17 MR. SIMPSON: One second here.

18 HEARING OFFICER CELLI: I see a mention at page  
19 6-8.

20 MR. HOFFMAN: On pages 6-11 there is an  
21 alternatives comparison table. And in working with the  
22 land use staff on the project site and the alternatives,  
23 it lists the general plan, east county plan area and it  
24 lists the zoning designation. It identifies is it  
25 consistent with zoning and on all three sites it says yes.



1 HEARING OFFICER CELLI: Okay. Go ahead. Your  
2 next question.

3 MR. SIMPSON: Thank you. Is the project  
4 consistent with the Williamson Act?

5 MR. HOFFMAN: (inaudible) Williamson Act  
6 contract. I know there was a lengthy discussion. I would  
7 have to of defer to our land use staff. We have that  
8 discussion on the Thursday in which I believe their  
9 discussion was that it was consistent with the Williamson  
10 Act contract.

11 MR. SIMPSON: But your testimony stated it  
12 wouldn't cause cancellation of a Williamson Act contract.  
13 Can you help me understand the basis for that?

14 MR. HOFFMAN: It identifies a Williamson Act  
15 contract and on the project site, yes, there is one.

16 MR. SIMPSON: And it's not your contention that  
17 it wouldn't cause cancellation of that contract?

18 STAFF COUNSEL WILLIS: I'm going to object to  
19 outside the scope of his testimony.

20 HEARING OFFICER CELLI: Sustained.

21 MR. SIMPSON: It's in his testimony.

22 HEARING OFFICER CELLI: I actually -- I'm reading  
23 what he said. I think there was some testimony that he  
24 had based this on, this communication was land use staff  
25 or something to that effect.

1           MR. SIMPSON: Okay. (inaudible) a couple of your  
2 concerns with using recycled water? Sounded like the  
3 length of the pipeline, the five mile pipeline?

4           MR. HOFFMAN: There is a certain there. But as  
5 the applicant and BBID have proposed to come up with a  
6 conservation program that would make water use essentially  
7 zero for the project. It's hard to come up with an  
8 alternative that's better than zero. And you're making  
9 improvements to an existing area. So I didn't find  
10 that -- I couldn't come up with an alternative that was  
11 better than what the applicant was currently proposing.

12          MR. SIMPSON: Well, would the applicant do those  
13 mitigation and use the recycled water?

14          MR. HOFFMAN: When staff proposes a condition of  
15 certification, it's in response to some kind of  
16 significant impact. And the conservation program was  
17 proposed. And staff never got to the analysis of whether  
18 or not you needed other alternatives or different types of  
19 conservation programs because you can't do better than a  
20 project using zero water. The water use of the project is  
21 zero. There isn't a need to come up with some type of  
22 conservation program or different water source. I think  
23 that will be further discussed today in soil and water.  
24 But from an alternatives analysis, if I don't have an  
25 impact to mitigate, I can't condition something.

1           MR. SIMPSON: You testified that this project  
2 would help with the integration of intermittent renewable  
3 resources. Are you referring to existing resources or  
4 resources yet to be developed?

5           HEARING OFFICER CELLI: Can you site to where  
6 you're looking when you ask the question, Mr. Simpson?

7           MR. SIMPSON: Sometimes I could.

8           MR. HOFFMAN: Are you looking at page 6-5, the  
9 first bullet point? And again that's one of the basic  
10 objectives of the project. And again, I took that from  
11 the applicant's application for certification.

12           MR. SIMPSON: Well, I've got it once here on 6-20  
13 it looks like. It as a response to comments. The main  
14 objective of the MEP, applicant to provide dispatchable  
15 efficient generation to meet Pacific Gas and Electric  
16 Company's need for energy resources in Alameda County and  
17 the San Francisco Bay Area, which is important back up  
18 intermittent renewable resources.

19           MR. HOFFMAN: Yeah, that's the first paragraph on  
20 page 6-20?

21           MR. SIMPSON: I believe so.

22           MR. HOFFMAN: That's actually a copy from page  
23 6-4 with part of the project objectives as well.

24           MR. SIMPSON: So my question is: Are you  
25 referring to existing renewable resources or future

1 renewable resources?

2 MR. HOFFMAN: It's referring to existing within  
3 the Altamont wind generation area.

4 MR. SIMPSON: I see. And was there a study to  
5 support that conclusion?

6 MR. HOFFMAN: Again, this is information I picked  
7 straight out of the application for the certification from  
8 the applicant. I did not come up with independent  
9 information. It's from the applicant's AFC.

10 MR. SIMPSON: I see. Are the greenhouse gases  
11 emitted a significant impact?

12 MR. HOFFMAN: That was further discussed on  
13 Thursday on February 24th with the Air Resources staff.

14 HEARING OFFICER CELLI: And Ms. Willis --

15 STAFF COUNSEL WILLIS: I was going to object it's  
16 outside the scope of his testimony and it was already  
17 testified to earlier.

18 HEARING OFFICER CELLI: I'm going to sustain the  
19 objection whether there is a GHG impact. Because that's  
20 an air quality thing.

21 MR. SIMPSON: Okay. Are there potential  
22 alternative generation technologies that would emit less  
23 greenhouse gases, solar, wind?

24 MR. HOFFMAN: Could you please restate that?

25 MR. SIMPSON: I could try. Are there generation

1 technologies like solar or wind that would emit less  
2 greenhouse gases than this project?

3 STAFF COUNSEL WILLIS: I'm going to object again  
4 it's outside the scope of his testimony.

5 HEARING OFFICER CELLI: Or his expertise. I'm  
6 not sure this witness is the right witness for that.

7 MR. SIMPSON: I think it's part of the  
8 alternatives analysis is are there better alternatives.

9 HEARING OFFICER CELLI: Show me what page we're  
10 referring to.

11 MR. HOFFMAN: If I could help out, on pages 6-16  
12 to 6-17, you start looking at different power generation  
13 alternatives as well as fuel technology alternatives and  
14 what I think Mr. Simpson was going with that was pretty  
15 broad, because the analysis I'm doing is in regard to  
16 facilities or technologies that could be used for peaking  
17 facility. And not a base load facility using potentially  
18 geothermal or some type of solar aspect.

19 HEARING OFFICER CELLI: Okay. So let's -- that  
20 would limit the scope of the next question in terms of his  
21 expertise.

22 MR. SIMPSON: Okay. Shall I restate the question  
23 or what was the --

24 HEARING OFFICER CELLI: No. I'm saying he just  
25 gave you a limitation on what he spoke to in his

1 testimony. And so now that might help you. Maybe not.

2 I'm not sure. I don't want to put thoughts in your head  
3 or words in your mouth or anything.

4 MR. SIMPSON: Okay. What's the size of the site?

5 MR. HOFFMAN: The actual size, let me go back to  
6 the actual project description. Because you have the site  
7 that is actual going to be what is built and I believe  
8 it's about ten acres and then you have the additional 9.2  
9 acres for the lay down facility.

10 MR. SIMPSON: I see. I think you answered my  
11 question. I thought it was ten acres. But earlier you  
12 said 20 acres. So I was trying to understand.

13 MR. HOFFMAN: When I said 20 acres, I meant  
14 ultimately finding not only a site where you would build  
15 it but additionally the added land necessary for the lay  
16 down to construct the site. This is part of my  
17 alternatives analysis. I was trying to figure out a place  
18 where you could have a relatively 20 acre flat area to  
19 build the project.

20 MR. SIMPSON: I see. Your testimony indicates if  
21 you don't build this, we may need to use existing high  
22 polluting (inaudible) more. Is it also true if we don't  
23 build this we may build something cleaner?

24 MR. HOFFMAN: Sure.

25 MR. SIMPSON: Thank you. Is it your testimony --

1 let me go to the page 6-15 and 6-16. At the bottom of  
2 page 6-15 --

3 HEARING OFFICER CELLI: Give me a second here,  
4 folks. Don't ask any questions and don't answer.

5 Okay. I think we're okay now. That's better.

6 MR. SIMPSON: On page 6-15 says even with this  
7 great variety of federal, state, local demand site  
8 management programs, the state's electricity use is still  
9 increasing as a result of population growth and business  
10 expansion. Current demand siting programs are not  
11 sufficient to satisfy future electricity needs, nor is it  
12 likely to meet much more aggressive demand site programs  
13 could accomplish this at the economic population growth  
14 rates of the last ten years. Therefore, it's likely the  
15 federal, State, and local demand site programs will  
16 receive even greater emphasis on the future. Both new  
17 generation and new transmission facilities will be needed  
18 in the immediate future and beyond in order to maintain  
19 adequate supplies.

20 Is there a study or a basis for that statement?

21 MR. HOFFMAN: That comes from another analysis  
22 that is taking place within this agency.

23 MR. SIMPSON: Can you tell me what --

24 MR. HOFFMAN: No, I can't.

25 MR. SIMPSON: Is this part of the cut and copy or

1 is this your --

2 MR. HOFFMAN: This comes from analysis that's  
3 done in many cases for the alternative sections within our  
4 documents. This is an area we use expertise from other  
5 sections within the building to help us with.

6 MR. SIMPSON: I see. But you can't identify what  
7 those sources are for me?

8 MR. HOFFMAN: Well, a lot of the information does  
9 come from the peer group. And it's information that's  
10 available to staff. So we use our resources as available.  
11 If you'd like to have a greater discussion on project  
12 needs or facilities --

13 HEARING OFFICER CELLI: So apparently maybe you  
14 might want to ask that question whether David Vidaver  
15 would be one of the sources. Because if he is, maybe he's  
16 a better person to ask those questions to, Mr. Simpson.

17 MR. SIMPSON: Thank you.

18 HEARING OFFICER CELLI: Did you just say that's  
19 all you have?

20 MR. SIMPSON: No, I said I wouldn't need to ask a  
21 witness who hasn't filed testimony.

22 HEARING OFFICER CELLI: How many more do you  
23 have?

24 MR. SIMPSON: I am pretty close to done.

25 HEARING OFFICER CELLI: Thank you. Go ahead.



1           MR. SIMPSON: Could the applicant build a  
2 facility that included a solar component on this site or  
3 parcel?

4           MR. HOFFMAN: They would have to propose  
5 something and then we would be to take a look at it. We  
6 treat it as a new application for certification. We ate  
7 route it and go through our process. Could they do it or  
8 what conditions, no idea at this point in time.

9           MR. SIMPSON: So you mentioned that earlier when  
10 a site changes that it would be a new application. Is  
11 that what happened in Russell City?

12          STAFF COUNSEL WILLIS: I'm going to object,  
13 irrelevant and whether or not this witness has any  
14 knowledge of Russell City.

15          HEARING OFFICER CELLI: I am going -- I'll  
16 sustain the second objection. I think there is some  
17 possible relevance, but I'll sustain the objection with  
18 regard to this witness.

19          MR. SIMPSON: Could they add a solar component to  
20 this project without it being a new application?

21          MR. HOFFMAN: No.

22          MR. SIMPSON: So this application could never be  
23 amended?

24          MR. HOFFMAN: Oh, you can always file for an  
25 amendment.

1 MR. SIMPSON: Does that contradict your previous  
2 answer?

3 HEARING OFFICER CELLI: I believe that would be  
4 argumentative, which means it's something you might want  
5 to put in your argument later.

6 MR. SIMPSON: Did (inaudible) any opportunities  
7 for the applicant to sequester their emissions?

8 MR. HOFFMAN: Sequester emissions?

9 MR. SIMPSON: Yes.

10 MR. HOFFMAN: I don't know what that is.

11 MR. SIMPSON: Thank you. No further questions.

12 HEARING OFFICER CELLI: Thank you.

13 Anything further from -- I didn't mean to skip  
14 over you, Mr. Wheatland. This is why I have my system, so  
15 I don't skip over people. That's why I seat people in  
16 particular ways.

17 MR. WHEATLAND: We have no questions, thank you.

18 HEARING OFFICER CELLI: Any redirect?

19 STAFF COUNSEL WILLIS: No.

20 HEARING OFFICER CELLI: Thank you, Mr. Hoffman.  
21 You're dismissed. And Mr. Vidaver as well.

22 At this time, folks, we're going to take a break.  
23 It as 4:42. We're going to resume straight up at 5:00.  
24 We would like everybody back in your seat at 5:00. Where  
25 we are right now is we have now finished -- is that

1 everything for staff? That's all of your witnesses for  
2 alternatives?

3 STAFF COUNSEL WILLIS: Yes.

4 HEARING OFFICER CELLI: We'll see you at 5:00  
5 everyone. We're off the record.

6 (Off record.)

7 HEARING OFFICER CELLI: Because we just finished,  
8 -- thank you, Mr. Hoffman. Now, we have applicant's  
9 testimony. We have staff's testimony. Bob Sarvey, you  
10 had testimony with regard to alternatives. Just  
11 documentary, I take it -- what happened to Mr. Powers  
12 or -- Dr. Powers?

13 MR. WHEATLAND: We stipulated to --

14 MR. SARVEY: We stipulated his testimony is in  
15 the record. You have the stipulated.

16 HEARING OFFICER CELLI: Can you take that stand  
17 and point it away from your microphone?

18 MR. WHEATLAND: So Mr. Powers' testimony has been  
19 received into evidence.

20 HEARING OFFICER CELLI: So Mr. Sarvey, I have --  
21 I'd like to do a recap with you. According to my  
22 calculations over the weekend, I've received exhibit -- I  
23 need to take in your -- did you make a motion on 400 and  
24 did we receive 400? I think we did. Okay. So 400 was  
25 received. I received 402, 403, 406, 411, 412, and 414.

1 MR. SIMPSON: I think you had 404 as well.

2 HEARING OFFICER CELLI: 404 is Alameda County.

3 MR. SARVEY: Land use.

4 HEARING OFFICER CELLI: Do I have 402 testimony  
5 of Richard Schneider. Land use. 403 we took in --

6 (Interruption in proceedings.)

7 HEARING OFFICER CELLI: Whoever that is who's  
8 speaking, please? Whoever is speaking on the phone, I'm  
9 going the mute you for a moment. When we go back to  
10 public comment, we will un mute you. The benefit of being  
11 a party is that I can't mute and unmute you. That's one  
12 of the great privileges of being an intervenor at the  
13 Energy Commission.

14 So 404 was Alameda County MEP cooperation  
15 agreement. I went through the transcript this weekend and  
16 I didn't see 404 --

17 MR. SARVEY: I moved it with the land use, but  
18 maybe it got overlooked.

19 HEARING OFFICER CELLI: It may well have been.  
20 You know, at the end of the hearing, I'm going to go  
21 through everybody's and I'm going to recap everything.

22 In fact, let me just check my notes. I have 402,  
23 414. I have 402, 414, 403, 411, 412, 406 -- you know,  
24 this is only happening from because nobody here from IT  
25 anymore.

1 I don't believe we've taken that in, Mr. Sarvey.  
2 At the end of the day I need you to re-move that in. Are  
3 you offering any witnesses at this time on alternatives?

4 MR. SARVEY: Yes. I'm offering myself and I'm  
5 offering a couple exhibits as well.

6 HEARING OFFICER CELLI: So I think we got it  
7 hand.

8 So it's 503, Sarvey. What's your motion, Mr.  
9 Sarvey?

10 MR. SARVEY: I move that we move into the record  
11 Exhibit 408 8, the alternatives testimony of Robert  
12 Sarvey, 410, compensation award, 0909021, 411, Mulqueeney  
13 ranch pump storage --

14 HEARING OFFICER CELLI: I think we already have  
15 411 in.

16 MR. SARVEY: Then we don't need to do it.

17 HEARING OFFICER CELLI: Go ahead.

18 MR. SARVEY: And that would be it on the  
19 alternatives, if you already have 411 in.

20 HEARING OFFICER CELLI: Okay. And you know what?  
21 At this time I'm going to allow Mr. Sarvey to move in 404.

22 MR. SARVEY: 404 Alameda County MEP cooperation  
23 agreement.

24 HEARING OFFICER CELLI: Any objection first with  
25 applicant to the receipt of Exhibits 404, 408, 410, 411?

1 MR. WHEATLAND: No.

2 HEARING OFFICER CELLI: Any objection by Mountain

3 House?

4 MR. GROOVER: None.

5 HEARING OFFICER CELLI: Mr. Dighe is no longer

6 here.

7 Mr. Wilson, do you have any objection?

8 MR. WILSON: None.

9 HEARING OFFICER CELLI: And Mr. Singh is not here

10 either. Sierra Club, do you have any objection?

11 MR. CARLTON: No.

12 HEARING OFFICER CELLI: Mr. Simpson, any

13 objection?

14 MR. SIMPSON: No objection.

15 HEARING OFFICER CELLI: Staff?

16 STAFF COUNSEL WILLIS: No objection.

17 HEARING OFFICER CELLI: Okay. Then without

18 objection, Exhibits 404, 408, 410, and 411 are received

19 into evidence.

20 (Whereupon the above-referenced document

21 were received into evidence by the

22 Hearing Officer.)

23 HEARING OFFICER CELLI: And then are you going to

24 call your first witness, Mr. Sarvey? Can you tell me who

25 we need to hear from or are you going to testify in

1 addition to your written testimony?

2 MR. SARVEY: Well, as I said before I didn't  
3 think any direct testimony was allowed. So I was just  
4 going to offer my testimony and if anybody had any  
5 questions, I'd be more than happy to answer them.

6 HEARING OFFICER CELLI: Thank you. You don't  
7 have any other witnesses on this topic?

8 MR. SARVEY: My other witness, Mr. Powers, has  
9 already been stipulated to. So that would be it, just  
10 myself.

11 HEARING OFFICER CELLI: Cross, I'm going to come  
12 back. Remind me as a come around. So really friend my  
13 witnesses, any cross. I've got Mr. Wilson saying no.

14 MR. WILSON: No.

15 HEARING OFFICER CELLI: I've got Mountain House  
16 saying no.

17 Any cross from Sierra Club?

18 MR. CARLTON: No.

19 HEARING OFFICER CELLI: Mr. Simpson?

20 MR. SIMPSON: Just my objection I can't cross  
21 because --

22 HEARING OFFICER CELLI: He's a friendly witness.  
23 Okay. I don't mean to put words in people's mouths, by  
24 the way. It's just something that happens.

25 Any objection, staff? Any cross of this witness

1 from staff?

2 STAFF COUNSEL WILLIS: No cross.

3 HEARING OFFICER CELLI: Any cross from the  
4 applicants?

5 MR. WHEATLAND: No.

6 HEARING OFFICER CELLI: Okay. Then with that,  
7 Mr. Sarvey, congratulations, your evidence is all in.

8 MR. SARVEY: Thank you Mr. Celli.

9 HEARING OFFICER CELLI: We are now into  
10 alternatives according to my records, then we've received  
11 all the evidence from applicant, staff, Sarvey.

12 Rajesh Dighe had Bill Powers and Mr. Sarvey.  
13 Their evidence is now all in. So do you have any other  
14 additional -- I need you to speak into the --

15 MR. DIGHE: No additional.

16 HEARING OFFICER CELLI: No additional evidence.  
17 Thank you.

18 And Mr. Singh, did you have any additional  
19 evidence?

20 MR. SINGH: Just want to check with you on  
21 socioeconomics my exhibits are in because I was not here.  
22 I was outside.

23 HEARING OFFICER CELLI: I'm going to eliminate  
24 you make that motion. Don't let me forget to do that.  
25 Hold the idea, okay.



1 MR. SINGH: Okay.

2 HEARING OFFICER CELLI: Mr. Dighe, so you had  
3 no -- I had already received all of your evidence into the  
4 record; isn't that correct? Sierra Club was calling Ed  
5 Mainland on alternatives.

6 MR. CARLTON: We offer 900 of Mainland's  
7 testimony.

8 HEARING OFFICER CELLI: We have 900 and 901;  
9 right?

10 MR. MAINLAND: 901 I think is --

11 HEARING OFFICER CELLI: I'll tell you.

12 MR. SARVEY: I think it's Dick Schneider's  
13 testimony under land use. Did you move that?

14 HEARING OFFICER CELLI: Dick Schneider, Dick  
15 Schneider's testimony.

16 MR. CARLTON: We're offering that too, yes. That  
17 was Dick Schneider was here.

18 MR. WHEATLAND: That was already received.

19 HEARING OFFICER CELLI: Was it? I didn't show it  
20 in the record. Since everybody is assuming it was already  
21 received --

22 MR. CARLTON: I think there was Dick Schneider --  
23 you had Dick Schneider testimony.

24 MR. SARVEY: For land use.

25 HEARING OFFICER CELLI: 900 and 901.

1 MR. SARVEY: But I don't think yours has been  
2 moved.

3 MR. CARLTON: (inaudible).

4 MR. SARVEY: I would move it now.

5 HEARING OFFICER CELLI: I'm going to move both of  
6 those in the record. My request that you move both 900  
7 and 901 in the record just to play it safe.

8 Any objection to 900 and 901 from the applicant?

9 MR. WHEATLAND: No.

10 HEARING OFFICER CELLI: Mr. Sarvey?

11 MR. SARVEY: No objection.

12 HEARING OFFICER CELLI: Mountain House?

13 MR. GROOVER: No.

14 HEARING OFFICER CELLI: Dighe?

15 MR. DIGHE: None.

16 HEARING OFFICER CELLI: Wilson?

17 MR. WILSON: None.

18 HEARING OFFICER CELLI: Singh?

19 MR. SINGH: None.

20 HEARING OFFICER CELLI: Sierra Club?

21 MR. CARLTON: No.

22 HEARING OFFICER CELLI: Simpson?

23 MR. SIMPSON: No, sir.

24 HEARING OFFICER CELLI: Staff?

25 STAFF COUNSEL WILLIS: None.

1 HEARING OFFICER CELLI: Thank you. Then exhibits  
2 900 and 901 are received into evidence.

3 (Whereupon the above-referenced documents  
4 were received into evidence by the Hearing  
5 Officer.)

6 HEARING OFFICER CELLI: Now, we are at --

7 MR. SARVEY: Mr. Celli, would this be the  
8 appropriate time to request official notice of certain CEC  
9 documents for alternatives?

10 HEARING OFFICER CELLI: Okay. Which documents  
11 did you --

12 MR. SARVEY: I would like to request that the  
13 Committee take official notice of the 2009 CEC electrical  
14 demand forecast. The increment all impacts, the CEC  
15 increment all impacts of energy policy initiatives related  
16 to 2009 integrated energy policy report adopted demand  
17 forecast and revisiting path 26 power flow assumptions.

18 HEARING OFFICER CELLI: Let me hear from staff on  
19 that first. Any objection to taking official notice?

20 STAFF COUNSEL WILLIS: I don't have those  
21 documents in front of me. I'm assuming that they're --

22 HEARING OFFICER CELLI: They apparently --

23 STAFF COUNSEL WILLIS: -- they are in the docket  
24 and I don't have any objection to them. I'm not sure -- I  
25 can't speak to the relevance of them.

1 HEARING OFFICER CELLI: I'm going to go off the  
2 record for just a moment.

3 (Off record.)

4 HEARING OFFICER CELLI: Applicant, do you want to  
5 speak to this?

6 MR. WHEATLAND: Yes, I wasn't even clear as to  
7 what documents were read off. But the policy that the  
8 Commission has consistently applied is that if the  
9 document is a document that's been officially adopted by  
10 the Commission itself, there's no need to take official  
11 notice of it, especially in a proceeding because the  
12 Commission can always take official notice of its own  
13 decisions.

14 On the other hand, if it's a document that is  
15 not -- has not been adopted by the Commission, such as a  
16 staff report or a draft of a Committee report or those  
17 kinds of things, then generally the Commission does not  
18 take official notice of it but instead requires a witness  
19 to sponsor that exhibit. So if the documents that Mr.  
20 Sarvey read are documents that have been adopted by the  
21 Commission, there's no need to take official notice. The  
22 Commission can always notice it because it's its own  
23 decision.

24 HEARING OFFICER CELLI: I am happy to report that  
25 was essentially what we had just talked about off the

1 record and that is the position of the Energy Commission.  
2 So what the request is is hold off on the motion, the  
3 Committee would want to see the document. If you have --  
4 it would be beneficial to the Committee if you can get it  
5 down to those excerpts.

6 MR. SARVEY: Everything that I've requested has  
7 already been adopted by the Commission with the exception  
8 of re-visiting path 24 power flow assumptions.

9 HEARING OFFICER CELLI: Okay. So --

10 MR. SARVEY: And it's in the docket for the 2009  
11 IEPR. So perhaps it has been adopted. I don't know.

12 HEARING OFFICER CELLI: Okay. Well, we're going  
13 to need to see that.

14 MR. SARVEY: Sure. I'm circulate it.

15 HEARING OFFICER CELLI: And there would certainly  
16 be no problem taking official notice of that. But let's  
17 take a look at that and also my request is you don't have  
18 to whop us with telephone books worth of information. If  
19 you can just give us that when is --

20 MR. SARVEY: It's about 18 pages. It's not too  
21 brutal.

22 HEARING OFFICER CELLI: So your motion is pending  
23 the resolution of those questions. Okay.

24 Cross of -- can we get through -- Mr. Mainland,  
25 you have a question?

1           MR. MAINLAND: Yes. Were you taking other  
2 documents for official notice at this time?

3           HEARING OFFICER CELLI: Yes, but not from you yet  
4 because I'm working my way around. So far, I just  
5 finished -- nobody had any cross for Mr. Sarvey. All of  
6 his documents are in. We are in the area of alternatives.  
7 Mr. Dighe, his evidence is in. And Mr. Singh's evidence  
8 is all in. So we are back to the Sierra Club now. And  
9 so, yes, now is the time for you to make your motion. Go  
10 ahead.

11          MR. MAINLAND: Should I explain the document and  
12 then ask your advise on moving it?

13          HEARING OFFICER CELLI: Yes.

14          MR. MAINLAND: Well, the document in question  
15 that I'd like to have the proceeding take notice of is  
16 called "standardized planning assumptions part one for  
17 system resource plans." This is a document in a CPUC  
18 proceeding R-1005006 that was filed in that proceeding on  
19 December 3rd. And it was rather late in being  
20 promulgated. I have a date of February 2nd. The page I  
21 would like to have taken official notice of is page 17 of  
22 that document and I have a copy here of it. So this is  
23 what I am taking official notice of this document.

24          HEARING OFFICER CELLI: Is this testimony?

25          MR. MAINLAND: This is a part of a 63 page

1 compendium of load forecasts prepared primarily the CEC as  
2 I understand it. And it -- you I'm not asking all 63  
3 pages. Page 17 deals precisely with the PG&E service  
4 territory. That's why it's relevant to this proceeding.

5 HEARING OFFICER CELLI: What is the basis for the  
6 official notice? That's what I want to know. In other  
7 words, does this testimony -- apparently it's not normally  
8 we take official notice of other agencies resolution,  
9 let's say or testimony that's under oath and subject to  
10 cross-examination. So I need to know what the basis of  
11 this document would be vis-a-vis mandatory versus  
12 permissive official notice. We are obligated to take  
13 official notice of things like laws and so forth. But I  
14 want to know whether -- what kind of guarantees of  
15 trustworthiness are there. How it was used.

16 MR. MAINLAND: Well, as to trustworthiness, it  
17 was as I said, formulated on based on CEC load forecasts.  
18 And it's presented by the CPUC to this proceeding as a  
19 basis for future procurement by the utilities. Its  
20 basis -- it is the basis for by which utilities will  
21 formulate future procurement plans.

22 HEARING OFFICER CELLI: Here's my ready, quick  
23 answer to everything that's going to come in.

24 MS. JENNINGS: Hearing Officer Celli, apparently  
25 we've lost connection. The last 15 minutes we haven't

1 been able to hear anything.

2 HEARING OFFICER CELLI: You know, at this point,  
3 since unless I have you call in and test and talk to me or  
4 if I unmute everybody -- let me do that. It's working  
5 with somebody. It's the guy with the -- Will Walters can  
6 you hear me? Hello. Will Walters? Hello? Who I am  
7 speaking with? Let me just try something here. Hello?  
8 Can you all hear me?

9 UNIDENTIFIED SPEAKER: Yes.

10 HEARING OFFICER CELLI: Thank you. We're going  
11 to get to public comment at 6:00. And Will Walters, are  
12 you out there? Will Walters, can you hear me? So Santa  
13 Clara parent ly what I have is -- hello?

14 Will Walters is that you?

15 MS. SARVEY: This is Susan Sarvey.

16 HEARING OFFICER CELLI: Hi, Susan Sarvey. Hello  
17 Will Walters. Hang in there and we will get to you.

18 It looks like our phone is working. So I'm going  
19 to put everybody back on mute, except the podium which is  
20 why you couldn't hear me before, because I had muted our  
21 output. And that is -- this is what happens when I'm  
22 supposed to be wearing so many hats at once. I blow it.  
23 Unmute all. So I'm going to mute all, but then I'm going  
24 to go into the podium and unmute the podium. So it shows  
25 that the podium is speaking. So that's working. Thank



1 you for bringing that to my attention.

2           So where was I? I was with -- so my request to  
3 you, Mr. Mainland and Mr. Carlton is that you get a copy  
4 of the document that you're talking about, show it to  
5 applicant and staff. If they're willing to stipulate to  
6 it, we don't have to take official notice. We'll just  
7 accept whatever you can get a unanimous stipulation to.  
8 So get give that a whirl. And then later you can create  
9 some copies for us. We can take a look and see because  
10 I'm not sure what the basis of -- unless this is something  
11 that you're saying is Energy Commission action that was  
12 taken and was vetted through the full Commission --

13           MR. CARLTON: No this is CPUC.

14           HEARING OFFICER CELLI: CPUC document. Okay.

15           MR. WHEATLAND: More over, if I could add, it's  
16 not the decision of the CPUC in proceeding R-1005006.  
17 This apparently is just an exhibit that may or may not  
18 have been received into evidence in that proceeding.

19           HEARING OFFICER CELLI: It sounds like you're not  
20 going to get a stipulation.

21           MR. WHEATLAND: It's not a document that's been  
22 adopted either by this Commission or by the CPUC.

23           MR. CARLTON: What I propose is that we document  
24 what this is and circulate it around, not right now. And  
25 then (inaudible).

1           HEARING OFFICER CELLI: Mr. Carlton, during the  
2 public comment period, which is going to be in about 40  
3 minutes, why don't you see if you can't corral the parties  
4 and see what you can come up within terms of consensus.  
5 After everybody gets back from moving their cars at 6:00.

6           So I'm deferring the motion until a later time.  
7 And I've received Exhibit 900 through 901. Did you have  
8 any testimony over and above Exhibits 900 and 901 that you  
9 needed to put?

10          MR. CARLTON: No.

11          HEARING OFFICER CELLI: Thank you.

12          So Mr. Mainland, are you making yourself  
13 available for cross-examination?

14          MR. MAINLAND: Yes.

15          HEARING OFFICER CELLI: Okay. Any  
16 cross-examination of Mr. Mainland by the applicant?

17          MR. WHEATLAND: I just have one question.

18          HEARING OFFICER CELLI: Go ahead.

19                           CROSS-EXAMINATION

20          MR. WHEATLAND: And this does not have to go to  
21 the substance of your testimony but it has to do with the  
22 nature of Sierra Club California. Could you explain to me  
23 the difference between Sierra Club and Sierra Club  
24 California?

25          MR. CARLTON: Perhaps I'm better able to do that.

1           MR. WHEATLAND: Excuse me, you're not the  
2 witness.

3           HEARING OFFICER CELLI: Actually, the witness  
4 isn't sworn either. Let's have Mr. Mainland sworn, Mr.  
5 Petty, if you would.

6           (Whereupon the witness was sworn.)

7           MR. PETTY: Please state your name for the  
8 record.

9           MR. MAINLAND: Edward Mainland.

10          HEARING OFFICER CELLI: Please proceed.

11          MR. WHEATLAND: Mr. Mainland, could you explain  
12 to me the difference between Sierra Club and Sierra Club  
13 California?

14          MR. MAINLAND: Yes, I can.

15          HEARING OFFICER CELLI: The record should reflect  
16 a conference between counsel and witness.

17          MR. MAINLAND: Simply put, Sierra Club is simply  
18 the manifestation of the national Sierra Club in  
19 California. Sierra Club California has its own executive  
20 Committee. It is the entity that comprises 13 chapters of  
21 the national Sierra Club in California. And its policy  
22 parliament is something called the regional conservation  
23 Committee of Sierra Club California. My colleague here,  
24 Mr. Carlton, is actually the Chairman of that body. So  
25 the Sierra Club California addresses such questions in the

1 energy field or habitat, conservation field that are  
2 particular to California.

3 MR. WHEATLAND: Is your charter as a lobbying  
4 organization?

5 MR. MAINLAND: What organization?

6 MR. WHEATLAND: Lobbying.

7 MR. SARVEY: Objection. Relevance.

8 HEARING OFFICER CELLI: What is the relevance?

9 MR. WHEATLAND: I'm trying to understand what  
10 this organization is. Whether they petitioned to  
11 intervene, they didn't describe their organization. I'm  
12 just trying to understand the nature of this organization.

13 MR. SARVEY: Objection. That's something he  
14 should have asked questions long ago.

15 HEARING OFFICER CELLI: Well, I wonder if we have  
16 enough information now.

17 MR. WHEATLAND: That's my last question.

18 MR. MAINLAND: Are you directing me to answer  
19 that question?

20 HEARING OFFICER CELLI: Please ask the question  
21 again.

22 MR. WHEATLAND: Is your charter as a lobbying  
23 organization.

24 MR. SARVEY: Have I been overruled?

25 MR. MAINLAND: The answer is yes.

1           MR. WHEATLAND: Thank you. That's all the  
2 questions I have.

3           HEARING OFFICER CELLI: Thank you.

4           Yes, Mr. Sarvey, you were overruled.

5           MR. SARVEY: Thank you, Mr. Celli, belatedly.

6           HEARING OFFICER CELLI: Just trying to handle all  
7 the things up here.

8           MR. SARVEY: I understand. I think I got your  
9 message.

10          HEARING OFFICER CELLI: Okay. So any further  
11 questions of Sierra Club as we go around the room?  
12 Anyone? Staff? Okay. Then at this point, thank you, Mr.  
13 Mainland. You're excused as a witness. But please remain  
14 as an intervenor.

15          So at this time, we received all of the evidence  
16 with regard to alternatives. So the subject of  
17 alternatives is closed.

18          Mr. Simpson was not on the list for alternatives,  
19 except to cross-examine. He had no other evidence with  
20 regard to alternatives.

21          MR. SIMPSON: That's correct.

22          HEARING OFFICER CELLI: Thank you. So are we  
23 clear on alternatives now as I look around the room, I'm  
24 seeing everybody nodding their heads in the affirmative.  
25 Thank you.

1           We're moving on next to --

2           STAFF COUNSEL WILLIS: Mr. Celli, is it possible  
3 to take Mr. Walters out of order?

4           HEARING OFFICER CELLI: Okay. We can do that.  
5 We were going to go to hazardous materials next, but if we  
6 take Mr. Walters -- this was limited. This was plume  
7 evidence for Will Walters --

8           STAFF COUNSEL WILLIS: Right under traffic and  
9 transportation.

10          HEARING OFFICER CELLI: Under traffic and  
11 transportation pursuant to the request of Mr. Wilson and  
12 Mr. Sarvey only. So we agree to make Mr. Walters  
13 available for those two parties only. And so if that's  
14 acceptable to your hazardous materials people --

15          STAFF COUNSEL WILLIS: Yes.

16          HEARING OFFICER CELLI: Then let me get on the  
17 phone. Mr. Will Walters, can you hear me? This is Ken  
18 Celli.

19          MR. WALTERS: Yes, I can hear you.

20          HEARING OFFICER CELLI: Okay. We're having a  
21 hard time hearing you. I need you -- if you're on a  
22 speaker phone, to pick up the handset and speak very  
23 loudly and clearly into it.

24          MR. WALTERS: Okay. I'm actually on the handset  
25 so I guess I'll have to speak very loud.

1 HEARING OFFICER CELLI: You sound good now. I'm  
2 going to go ahead and have you sworn.

3 (Whereupon the witness was sworn.)

4 MR. WALTERS: I do.

5 MR. PETTY: Please state and spell your name for  
6 the record.

7 MR. WALTERS: It's William Walters,  
8 W-i-l-l-i-a-m, W-a-l-t-e-r-s.

9 HEARING OFFICER CELLI: Okay. So Mr. Walters is  
10 applicant's witness.

11 DIRECT EXAMINATION

12 STAFF COUNSEL WILLIS: Mr. Walters, your  
13 qualifications are attached to your testimony; is that  
14 correct?

15 MR. WALTERS: That is correct.

16 STAFF COUNSEL WILLIS: So the staff would open  
17 this witness up for cross-examination.

18 HEARING OFFICER CELLI: Thank you. Go ahead, Mr.  
19 Sarvey.

20 Cross-examination

21 MR. SARVEY: Good evening, Mr. Walters. On page  
22 4.10-59 in your testimony, it states you use the spillane  
23 approach to calculate plume velocity for a single turbine.  
24 On page 4.10-60 of your testimony, you state for multiple  
25 stack plumes whether the stacks are equivalent, the

1 multiple stack plume velocity during calm winds was  
2 calculated by staff in a simplified fashion presented in  
3 the best paper as follows. Why didn't you use the  
4 spillane approach for multiple stack velocity?

5 MR. WALTERS: Actually, this is from the same  
6 paper and what it does is it gives us (inaudible) that are  
7 identified on 4.10-59 and then gives you the correction  
8 factor that's in equation five for the multiple stacks  
9 where in the number of stacks times the exponents factor  
10 of 0.25. So it's all the same method with that correction  
11 for multiple stacks.

12 MR. SARVEY: Did you calculate the velocity using  
13 the spillane approach for multiple stack velocities?

14 MR. WALTERS: Yes, I calculated for one stack and  
15 then corrected for multiple stacks.

16 MR. SARVEY: But you did use the spillane  
17 approach that you described and provided greater velocity;  
18 is that correct?

19 MR. WALTERS: I provided -- I used the spillane  
20 approach as noted in my testimony equation one through  
21 four and corrected for multiple stacks as noted in  
22 equation five on page 4.10-60. And it noted in my  
23 testimony because the stacks were linear, I used and not  
24 in a square or closer together, I multiplied by a factor  
25 of two stacks to come up with what I consider to be a



1 worst case stimulate agricultural investment.

2 MR. SARVEY: And your testimony on page 4-10-22  
3 it states Energy Commission staff uses 4.3 meters per  
4 second virtual velocity threshold for determining whether  
5 a plume may propose a hazard to aircraft. Was that staff  
6 as position in the East Shore and Russell City case as  
7 well?

8 MR. WALTERS: Anything that's outside of the  
9 appendix is not specifically my testimony.

10 HEARING OFFICER CELLI: There you go.

11 MR. SARVEY: I'm not sure I understood that

12 HEARING OFFICER CELLI: He said that anything  
13 that was outside of this project was not his testimony.

14 STAFF COUNSEL WILLIS: I believe he was --

15 MR. WALTERS: I'm saying anything that's outside  
16 of the appendix in the velocity appendix to the traffic  
17 transportation section is not specifically my testimony.

18 HEARING OFFICER CELLI: Okay. Is that clear, Mr.  
19 Sarvey?

20 MR. SARVEY: I understand now.

21 So the plume hazard could extend as high as 1,230  
22 feet for all turbines if they were all operating; is that  
23 right?

24 MR. WALTERS: The velocity of 4.3 liters per  
25 second could extend to approximately that level -- yes.

1 If they're running at full load under calm wind conditions  
2 at 46 degrees Fahrenheit, which is a generalized worst  
3 case scenario.

4 MR. SARVEY: And how does the temperature effect  
5 your calculations for the plume height and width?

6 MR. WALTERS: It is actually a fairly minor  
7 factor, because the temperature differential for a simple  
8 cycle turbine starts at 750 or more. It does increase  
9 things a little bit. But the differential between 80  
10 degrees and 46 degrees is still a fairly minor factor.  
11 But I did leave a fairly conservatively low temperature  
12 just to maximize to a reasonable extent.

13 MR. SARVEY: Do you have a number for how high  
14 that plume would rise if there was only two turbans  
15 operating?

16 MR. WALTERS: Well, my analysis is based on the N  
17 value, the multiplier being essentially the equivalent of  
18 two stacks being right next to each other, which I  
19 consider the worst case, considering the linear geometry  
20 of the site. So if they were two that were next to each  
21 other, they would essentially -- I would essentially be  
22 using the same calculation methods.

23 MR. SARVEY: So I guess I need to ask again, I  
24 noticed that in your testimony that if one turbine was  
25 operating it would be 780 feet that would be the height of

1 the plume. And then once again, what would be the height  
2 of the plume with two turbans operating? I didn't quite  
3 understand your answer. I'm sorry.

4 MR. WALTERS: Well, combined turbans because of  
5 the geometry of it being linear and not being a square or  
6 having stacks that are right next to each other say, for  
7 example, the Humboldt case where those engine stacks there  
8 were four of them that were essentially right next to each  
9 other, you have to take into account the geometry in order  
10 to determine how you should combine to come up with the  
11 worst case.

12 Since they're linear, I combined basically --  
13 whether it's four or two, the same -- the assumptions is  
14 that with the combination -- worst case combination is two  
15 based on the geometry. So in the equation number five,  
16 the value of N, which is number of stacks that I used my  
17 equation because the geometry I used two.

18 MR. SARVEY: Sorry. Go ahead.

19 MR. WALTERS: I think it's noted in the  
20 parenthetical two lines from the bottom of 4.10-16 where  
21 it says equivalents to two gas turbans using equation  
22 five --

23 MR. SARVEY: So essentially there is no  
24 calculation of all four plumes operating at once how high  
25 and how wide that plume would be?

1           MR. WALTERS: Well, like I said, the geometry for  
2 using the correction factor is it appropriate. However,  
3 if you take a look at the method used by Katestone and the  
4 (inaudible) dynamic methods used by CH2MHILL, you'll see  
5 that worst case numbers are extremely comparative.  
6 They're within any reasonable amount of error from one  
7 another.

8           MR. SARVEY: So it's hard to compare different  
9 power projects, because it depends on the -- how the  
10 plumes are arranged. I mean how the stacks are arranged  
11 and the distance between them, is that a correct  
12 assumption?

13           MR. WALTERS: Well, there are a lot of factors.  
14 What I do with my analysis to try to come up with  
15 something that as a reasonable worst case for the  
16 transportation -- traffic and transportation analyst used  
17 in their determination whether there could be significant  
18 impacts. And for this particular case with the factors  
19 that (inaudible) of this specific system configuration, I  
20 used a combined two stacks as if they were essentially  
21 right next to each other, even though they aren't. But I  
22 did that because there are four stacks in the combination  
23 of the four stacks with the separation would be about  
24 equivalent to two stacks if they're right next to each  
25 other.

1           MR. SARVEY: So if I was to fly say 500 feet  
2 horizontally away from the stack, would that plume  
3 velocity and height be much different?

4           MR. WALTERS: Well, if you're not flying directly  
5 over the stack, the only way you're going to see the  
6 velocity from that stack is if there is a significant  
7 amount of wind that's blowing the plume to that direction.  
8 And any significant amount of wind is going to knock down  
9 the vertical velocity very quickly.

10           And as noted, my worst case analysis is based on  
11 a dead calm wind and any wind above two to three meters  
12 per second and you're not going to have much of a  
13 significant effect at any height.

14           MR. SARVEY: On page 4.10-60 of your testimony,  
15 it states that your equation provide the plume average  
16 velocity for the area of the plume at a given height above  
17 the ground. But the peak plume velocity would be two  
18 times higher than the plume average velocity predicted by  
19 this equation; is that correct?

20           MR. WALTERS: That's correct. Basic (inaudible)  
21 in principle.

22           MR. SARVEY: Do you have any feel for how fast  
23 that plume velocity would be at maximum in that plume?

24           MR. WALTERS: Well, all you have to do is based  
25 on the height and the table number two that's on page

1 4.10-61 is multiply all those values by two. So at 300,  
2 the worst case would be two times 7.93 at 1,000 would be  
3 two times 4.64 meters per second.

4 MR. SARVEY: In your calculations of the plume,  
5 will there be any time during the year that a visible  
6 plume could be a hazard to aviation?

7 MR. WALTERS: You know, I didn't actually prepare  
8 myself a visual plume since that wasn't indicated to be an  
9 issue. However, with the simple cycle, I don't believe  
10 that any visible plumes should occur just because of a  
11 drop in temperature. Also it had an air cooled condensers  
12 so there wouldn't be any significant plumes from cooling.  
13 So, no, I don't -- in fact, one of the reasons why the  
14 vertical plume is more of an issue is that it's never  
15 visible and that's why we do the analysis because it's  
16 something that a pilot could encounter unknowingly.

17 MR. SARVEY: Have you calculated any plume speed  
18 for a frame seven that would be utilized by East Altamont  
19 Energy Center?

20 MR. WALTERS: No. I believe East Altamont came  
21 before we started doing these kinds of analyses.

22 MR. SARVEY: And this may be outside your field.  
23 But would the operation of both East Altamont and the MEP  
24 result in a cumulative loss of unimpeded navigable air  
25 space?

1           MR. WALTERS: I have no idea. I don't have any  
2 knowledge of the air space. I haven't done that analysis.

3           MR. SARVEY: Thank you, Mr. Walters.

4           That's all I have.

5           HEARING OFFICER CELLI: Thank you, Mr. Sarvey.

6           Mr. Wilson for California Pilots Association.

7 Any questions, for Mr. Walters?

8           MR. WILSON: Yes.

9           HEARING OFFICER CELLI: Go ahead.

10          MR. WILSON: In your equation number two, when  
11 you use temperature, where did you get that temperature  
12 from?

13          MR. WALTERS: Are you talking about the stack  
14 temperature or the ambient temperature?

15          MR. WILSON: Ambient temperature.

16          MR. WALTERS: I use ambient temperature the four  
17 to six as a generalized worst case scenario with calm  
18 winds. Partially based on meteorological conditions that  
19 occur at the site.

20          MR. WILSON: So where as the applicant used  
21 whether -- a whether model in their case, you just  
22 selected the single temperature point that would create  
23 the worst case and used that? That being 46 degrees?

24          MR. WALTERS: Yeah. Our analysis is differs from  
25 the applicant's two analyses in the fact that we tried to

1 look at the worst case and go from there, with the thought  
2 there's the potential pilot being over the stack or could  
3 be if we didn't mitigate for that fact at any time,  
4 including worst case scenario. So that's our starting  
5 basis in looking at this type of issue.

6 MR. WILSON: Okay. You have in your equations A  
7 is equal to the plume top hat radius. Could you describe  
8 what the top hat radius is?

9 MR. WALTERS: It's essentially the quarter of the  
10 plume that's identified for determining the plume average  
11 velocity. And it's designed -- I have noted on page  
12 4.10-59.

13 HEARING OFFICER CELLI: I think it might help to  
14 speak straight on instead of to the side of it.

15 MR. WILSON: So you've already answered there is  
16 an average speed of the plume, and that's what you used in  
17 the chart. But you also said the fastest part of the  
18 plume is two times the average. So if we go to 2,000 feet  
19 in your chart where you've got the combined turbans at 46  
20 degrees, you show an average of 3.61 but the maximum would  
21 be two times that. So you're at 7.22 meters per second.

22 MR. WALTERS: That's correct.

23 MR. WILSON: Is that the center of the plume or  
24 the outer edge of the plume or are you taking the cross  
25 section and averaging it?



1           MR. WALTERS: The 7.22 would be the maximum  
2 center point of the plume. The galaxy of distribution is  
3 essentially a bell curve. So you can think of it being  
4 the top of the bell curved and the average is --  
5 essentially, the average is bell curved.

6           MR. WILSON: So an air contract going over the  
7 plume, any two plumes that were at where the gas turbans  
8 were operating at their maximum, then they would  
9 experience a 7.22 at 2000 feet that would be 7.22 meters  
10 per second?

11          MR. WALTERS: If the conditions were dead calm  
12 with 46 degrees with the turbans running at maximum, yes.

13          MR. WILSON: So did you do the calculation at  
14 4,000 feet?

15          MR. WALTERS: No, I provided this data to the  
16 traffic analyst and I don't remember if they asked for  
17 anything at higher levels or not. But you know, it  
18 essentially drops down in height.

19          MR. WILSON: I don't want to repeat what Mr.  
20 Sarvey said, so give me a moment.

21                 So with no wind at 2000 feet say, what would be  
22 the diameter of the plume with two stacks?

23          MR. WALTERS: I'd have to actually look that up.  
24 I think I have it in my spreadsheets, but it's not  
25 presented in my testimony, so I'm actually not even sure

1 it's proper for me to answer that question.

2 HEARING OFFICER CELLI: So are you able to answer  
3 that question, Mr. Walters?

4 MR. WALTERS: I can look it up in my spread sheet  
5 and answer that question, but it may take me about five  
6 minutes to find it all.

7 HEARING OFFICER CELLI: Let's -- what do you want  
8 to do, Mr. Wilson?

9 MR. WILSON: I'll continue. But he can look it  
10 up while we move on.

11 HEARING OFFICER CELLI: Okay. If you can  
12 multi-task, Mr. Walters.

13 MR. WILSON: And I think I may only have one or  
14 two more questions and hispanic go to his look up table or  
15 whatever he needs.

16 HEARING OFFICER CELLI: Go ahead and ask your  
17 next question, Mr. Wilson.

18 MR. WILSON: Mr. Walters, you have in here where  
19 under conclusions the peak plume average vertical velocity  
20 can remain over 4.3 meters per second to approximately  
21 1200 feet above the ground. But don't you mean 1200 feet  
22 above the top of the stack?

23 MR. WALTERS: No. That's already been corrected.

24 HEARING OFFICER CELLI: So what is the  
25 correction? Is it from the ground or the top of the

1 stack, Mr. Walters? Did you understand the question?

2 MR. WALTERS: I'm multi-tasking trying to find  
3 the other data.

4 HEARING OFFICER CELLI: While you're looking for  
5 the data, the question that still remains to be answered  
6 is whether the 4.3 meters per second was calculated to a  
7 maximum of 1200 feet above the ground or above the stack.  
8 Did I ask that correctly? Okay. Did you understand?

9 MR. WALTERS: Yeah. That's a height above  
10 ground.

11 HEARING OFFICER CELLI: Okay.

12 MR. WILSON: Did you subtract out the stack  
13 height?

14 MR. WALTERS: The stack height is out of the  
15 equation.

16 MR. WILSON: Out of the equation.

17 MR. WALTERS: (inaudible) equation as the  
18 variable DS, virtual source height.

19 MR. WILSON: I think I'm done to my last  
20 question, and while you're looking that up, and CH2MHILL,  
21 the computational fluid dynamics turbine exhaust velocity  
22 characterization was done by a piece of software called  
23 Ansys Fluent, which they use as a release 12.1 or some  
24 people refer to it as Version 12.S1. Did you use any of  
25 that data that they calculated for you?

1           MR. WALTERS: I didn't use the data. What I did  
2 is I analyzed and compared both the results that they came  
3 up with for calm wind conditions. And as a result of the  
4 Katestone came up with for comp conditions using the TAPM  
5 model and basically found that all three methods, which if  
6 done properly is not surprising came up with very similar  
7 results since they're all generally based on (inaudible)  
8 and calculations.

9           MR. WILSON: So you looked at end results. But  
10 did you ever see the raw data that was used in the Ansys  
11 Fluent calculation?

12           MR. WALTERS: I saw the inputs that were used,  
13 but I don't have the Ansys model, so I couldn't rerun it  
14 myself.

15           MR. WILSON: I think it was clear in your paper  
16 that you didn't have the an subsidies model and that you  
17 used their results.

18           MR. WALTERS: I compared the results.

19           MR. WILSON: Okay.

20           MR. WALTERS: If we can get back to your original  
21 question, you asked for an area and if you could remind  
22 me, please, which specific area you're looking for, was it  
23 at the 4.3 meter per second about 1200?

24           MR. WILSON: We could use 1,200 feet and also  
25 2,000 feet. So I'm looking for the diameter of the plume.

1           MR. WALTERS: Okay. The diameter of the plume at  
2 1,230 feet, which is essentially a 4.3 meters per second,  
3 I have calculated as 109 meters.

4           MR. WILSON: And that's (inaudible).

5           MR. WALTERS: Excuse me?

6           MR. WILSON: And at 2,000 feet?

7           MR. WALTERS: At 2,000 feet, I have a diameter of  
8 a little bit under 185 meters.

9           MR. WILSON: I think that is all I have. Give me  
10 another moment. I don't want to repeat what Mr. Sarvey  
11 said. I think that's all I have for Mr. Walters.

12           Thank you very much, Mr. Walters.

13           HEARING OFFICER CELLI: Thank you, Mr. Wilson.

14           Now, it was only Sarvey and Wilson who requested  
15 this witness. This is staff's witness. Anything from  
16 applicant of this witness?

17           MR. WHEATLAND: No.

18           HEARING OFFICER CELLI: Anything further from  
19 staff?

20           STAFF COUNSEL WILLIS: No.

21           MR. SIMPSON: I have a question.

22           HEARING OFFICER CELLI: Mr. Simpson, what is your  
23 question?

24           MR. SIMPSON: Mr. Walters --

25           STAFF COUNSEL WILLIS: I'm going to object to Mr.

1 Simpson. I think you've gone over about --

2 HEARING OFFICER CELLI: I'm going to ask you to  
3 ask -- I want to know what your question is before I'm  
4 going to allow you to ask Mr. Wilson.

5 MR. SIMPSON: Oh, I'm sorry. I thought you were  
6 inviting me to ask --

7 HEARING OFFICER CELLI: I will if it seems  
8 appropriate. But we'll hear it.

9 MR. SIMPSON: Walters, right

10 HEARING OFFICER CELLI: Right.

11 MR. SIMPSON: Well, I don't know much about  
12 plumes velocity and this sort of thing. I'm just trying  
13 to understand if this plume is a hazard to aircraft?

14 HEARING OFFICER CELLI: I'm not sure whether this  
15 is the appropriate witness for that, because he's a -- we  
16 did have a huge panel of experts --

17 STAFF COUNSEL WILLIS: He's testified that his  
18 testimony is the appendix that analyzed the plume.

19 HEARING OFFICER CELLI: So I would not allow that  
20 question, Mr. Simpson.

21 MR. SIMPSON: Well, his resume indicates that he  
22 participated in aircraft safety review of thermal plume  
23 tush allowance for the Riverside Energy Resources Center,  
24 Russell City Energy Center amendment, East Shore Energy  
25 Center, Carlsbad Energy Center, City of Palmdale Hybrid

1 Energy Center, Riverside Energy Resource Center three and  
2 four, Victorville Hybrid Power Project. So it seems like  
3 he's the guy to ask --

4 HEARING OFFICER CELLI: Let me ask the question.

5 Mr. Walters, the question was is the plume a  
6 hazard to aircraft? That's a yes or no question.

7 MR. WALTERS: Is any plume a potential hazard to  
8 aircraft?

9 HEARING OFFICER CELLI: Yes.

10 MR. WALTERS: (inaudible) is not Mariposa based.

11 HEARING OFFICER CELLI: Well, let's make it  
12 Mariposa based.

13 MR. WALTERS: What?

14 HEARING OFFICER CELLI: Let's make it Mariposa  
15 based. Are the stacks -- would the stacks from Mariposa  
16 be a hazard to aircraft?

17 MR. WALTERS: I did not evaluate that in my  
18 testimony. In my experience that was noted, that  
19 experience basically is doing the same kind of analyses in  
20 here which is provide data to the traffic and  
21 transportation analysts for them to make the determination  
22 of whether or not a given plume would have a potential for  
23 a traffic impacts.

24 HEARING OFFICER CELLI: Okay. Thank you, Mr.  
25 Walters.

1           And then with that, there is nothing further of  
2 this witness, I would excuse Mr. Walters. Thank you, Mr.  
3 Walters, for calling in.

4           MR. WALTERS: You're welcome.

5           HEARING OFFICER CELLI: You're excused. Now,  
6 ladies and gentlemen, we cross off from our list that  
7 portion. So we've handled socio. We handled alternatives  
8 and we've handled Mr. Walters' testimony. We have not  
9 handled hazardous materials. In eight minutes, we're  
10 about to go into our public comment period. After  
11 hazardous materials, then we go into biological resources,  
12 soil and water resources, worker safety, fire protection,  
13 visual resources. And I'm hoping to hear when we come  
14 back that some of those have gone away or will be  
15 stipulated to the existing record.

16           Those of you with a car, better run across the  
17 street then and get ready the park on the street if you  
18 can. We will take up public comment at 6:00. So those of  
19 you who are on the phone, hang in there, and we'll go to  
20 the phones in just eight minutes. Anything further from  
21 any of the parties?

22           MR. SARVEY: I'd like to make a motion that we  
23 continue the hearing after the public comment period to  
24 another day. It's a two-and-a-half hour drive for me to  
25 get here, two-and-a-half hour drive back. It's not



1 realistic I'm going to stay much longer.

2 HEARING OFFICER CELLI: We'll run it by the  
3 Committee and see. We'll see you all at 6:00.

4 (Off record.)

5 HEARING OFFICER CELLI: We're on the record. So  
6 Valentina, please state and spell your name.

7 MS. SEFEJUNKU: It is Valentine, V, as in Victor,  
8 a-l-e-n-t, as in Tom, i-n, as in Nancy, a. Last name,  
9 S-e-f, as in Frank, e, as in Edward, j, as in June, u-n-k  
10 as in king, u.

11 HEARING OFFICER CELLI: Thank you. We got your  
12 name spelling, so go ahead with your comment, please.

13 MS. SEFEJUNKU: I am opposed to the power plant.  
14 I think that the existence of the power plant  
15 environmentally can be harmful. We don't get any tax  
16 benefits from it in Contra Costa County. And I also  
17 believe it will impact the real estate values in Mountain  
18 House area.

19 HEARING OFFICER CELLI: Are you a resident of  
20 Mountain House?

21 MS. SEFEJUNKU: Negatively impact the real estate  
22 values. Yes, I am a resident of Mountain House.

23 HEARING OFFICER CELLI: Thank you. Anything  
24 further?

25 MS. SEFEJUNKU: Those are my main concerns.

1 HEARING OFFICER CELLI: Well, thank you for  
2 sharing those concerns with us.

3 Is there anyone else on the phone who would like  
4 to make a comment to the Committee? Speak up.

5 The record should reflect I have five people on  
6 the phone who are not identified who I assume are people  
7 who called in and are members of the public who would like  
8 to make a public comment. If you're a member of the  
9 public and want to make a public comment, please speak up  
10 now. I'm not hearing any.

11 MS. SEFEJUNKU: This is Valentina.

12 Where can I go to get the update of the progress  
13 and the community input?

14 HEARING OFFICER CELLI: If I understand your  
15 question, you want to read the transcripts?

16 MS. SEFEJUNKU: Yes. I want to know what's  
17 transpired at this point up to this point.

18 HEARING OFFICER CELLI: Okay. What I think best  
19 thing to do would be to call for send an e-mail to the  
20 public adviser and the public adviser's e-mail address is  
21 publicadviser@energy.state.ca. us.

22 MS. SEFEJUNKU: Publicadviser@energy.state.ca.us.

23 HEARING OFFICER CELLI: And public adviser is an  
24 adviser with e-r, not o-r.

25 MS. SEFEJUNKU: That's an important distinction.

1 Thank you.

2 HEARING OFFICER CELLI: Is there anyone else on  
3 the telephone who would like to make a public comment at  
4 this time?

5 Now I had -- there was a C. Tan who's on. There  
6 are a number of people using the void function which means  
7 they're listening on their computers but they don't have  
8 telephone out capability. Means they can't speak. If  
9 anyone else is out there wanting to make a public comment,  
10 please let's hear from you now. Now would be the time.  
11 Somebody is raising their hand.

12 Susan Sarvey, can you speak up? Susan Sarvey, I  
13 have you. Is Simone Estavilla? Simone Estavilla?

14 MS. ESTAVILLA: Yeah. Can you hear me?

15 HEARING OFFICER CELLI: Yes. Please, is this  
16 Ms. --

17 MS. ESTAVILLA: (inaudible).

18 HEARING OFFICER CELLI: You don't have to. I was  
19 just asking. I'm looking at people that have actually  
20 identified themselves.

21 Is there a Mr. or Ms. C. Tan? Last name Tan.  
22 Did you wish to make a comment?

23 How about Jeremiah Bodner? Did you wish to make  
24 a comment? Hello?

25 Lynn Sadler, I'm going to mute you.

1 I'm afraid that we have taken all of the public  
2 comment there is to take tonight. There are people who I  
3 would have imagined wanted to make a public comment, Susan  
4 Sarvey among them. She's raised her hand. I've got her  
5 unmuted. And Susan Sarvey, are you there? Did you wish  
6 to make a comment? Hello?

7 Well, is there anyone else on the phone at all  
8 who wishes to make a public comment at this time? C. Tan.  
9 Oh, hello. C. Tan -- so I got an e-mail here for a chat  
10 from C. Tan saying hello. And I sent an e-mail back that  
11 said did you wish to comment. She said yes. Mr. or  
12 Ms. Tan, are you on the telephone or are you just able to  
13 send me your chat message? If you just want to send me  
14 your chat message, I will read it into the record for you.

15 Okay. She's only able to use the chat. Go ahead  
16 and chat us your comment and I will read it into the  
17 record. Where there's a will, there is a way. If we want  
18 to get your comment, we will get it in.

19 I'm just waiting right now for C. Tan's chat.  
20 While we're waiting for C. Tan's chat, is there anyone  
21 else on the phone who would like to make a public comment?  
22 Anyone at all? Please speak up if you're there and you  
23 want to make a public comment.

24 MS. DEL ROSARIO: Hello?

25 HEARING OFFICER CELLI: Hello. Who am I speaking

1 with?

2 MS. DEL ROSARIO: Yes, my name is Roceliza del  
3 Rosario.

4 HEARING OFFICER CELLI: Oh, thank you for calling  
5 in. I called you earlier. I must have had you on mute.  
6 Go ahead, Roceliza, any public comment. Go ahead.

7 MS. DEL ROSARIO: Yeah, I just wanted to say that  
8 I am not a resident of Mountain House. I'm hoping to be.  
9 And I'm calling from out of state. And there's a stigma  
10 associated with living near a power plant. So I know that  
11 I'm not the only one that has that opinion. And if  
12 Mountain House hopes to grow and recover from this loses,  
13 we need to attract new people, new residents. And I think  
14 the power plant would really hurt its ability to grow. So  
15 a power plant is a stigma.

16 HEARING OFFICER CELLI: Thank you. I recall  
17 aren't you the woman from I think New Jersey who called in  
18 last week?

19 MS. DEL ROSARIO: Yes.

20 HEARING OFFICER CELLI: Okay, good. Anything  
21 further, Ms. del Rosario?

22 MS. DEL ROSARIO: No. That's it.

23 HEARING OFFICER CELLI: Thank you for your  
24 comments.

25 MS. DEL ROSARIO: Thank you.

1 HEARING OFFICER CELLI: Is there anyone else  
2 who's on the telephone who would like to make a comment?  
3 Okay. I'm still waiting for C. Tan to comment. I'm just  
4 going to type something really quickly.

5 I just sent an e-mail -- not an e-mail, a chat  
6 via Web Ex to C. Tan saying send me your comments and I'll  
7 read it into the record. So I'm just going to give her a  
8 minute to send me by way of chat her comments. I'll read  
9 them into the record and if there's -- while I'm waiting  
10 if there's anyone else on the telephone who would like to  
11 make a comment, please speak up. Is that all?

12 MR. SHAIK: I do not know what you're talking  
13 about.

14 HEARING OFFICER CELLI: We have somebody speaking  
15 on the phone. It's a male. You sound like you're a male  
16 from India, perhaps.

17 MR. SHAIK: Yeah. Okay.

18 HEARING OFFICER CELLI: Yes. I can hear you  
19 fine. Please state and spell your name.

20 MR. SHAIK: I-l-i-a-s.

21 HEARING OFFICER CELLI: Say that again. If you  
22 are on a speaker -- sir, we can hardly hear you. If  
23 you're on a speaker phone, if you pick up the receiver and  
24 speak into the receiver instead of the speaker phone.

25 MR. SHAIK: Okay.

1 HEARING OFFICER CELLI: Much, much better. Now  
2 if you would please state your name and spell it for the  
3 record.

4 MR. SHAIK: I-l-i-a-s.

5 HEARING OFFICER CELLI: Last name?

6 MR. SHAIK: S-h-a-i-k.

7 HEARING OFFICER CELLI: Go ahead. You have our  
8 attention. We're listening. Go ahead.

9 MR. SHAIK: I just joined the conference. I do  
10 not want to comment that you are asking about.

11 HEARING OFFICER CELLI: Do you have any comments  
12 whatsoever on the Mariposa Energy Project?

13 MR. SHAIK: Yes, I do.

14 HEARING OFFICER CELLI: Well, let's hear it.

15 MR. SHAIK: Regarding the concern that the  
16 Mountain House residents, I came here for environmental  
17 and very (inaudible) and having power plant here it will  
18 be like (inaudible) so I would be like a lot of pollutants  
19 and we may have like -- we may have the values of the  
20 homes brought down. (inaudible) go down. That's my major  
21 concern.

22 HEARING OFFICER CELLI: Thank you for sharing  
23 those concerns, Mr. Shaik. Thank you for calling in.

24 I wanted to say before we take any more callers  
25 that I did receive a chat from C. Tan and he/she says, "I

1 would like to voice my opposition to the Mariposa project.  
2 It is located within three miles of Questa school, which  
3 is a combined middle school and elementary school, in  
4 addition to being located near numerous community parks  
5 and residents."

6 So thank you for that, Ms. or Mr. Tan, C. Tan.

7 Anyone else on the phone who would like to make a  
8 public comment? Please speak up.

9 MS. SARVEY: Susan Sarvey.

10 HEARING OFFICER CELLI: Hello, Susan Sarvey. Any  
11 relation to Bob Sarvey?

12 MS. SARVEY: Yes. I'm his wife.

13 HEARING OFFICER CELLI: Okay. Great. Because I  
14 know Bob.

15 MS. SARVEY: You probably like him better. Is it  
16 my turn to go?

17 HEARING OFFICER CELLI: It's your turn.

18 MS. SARVEY: This evidentiary hearing was held  
19 without any notice to the public of participation  
20 opportunities today. Staff has testified they held many  
21 workshops in Mountain House. They had a workshop at BBID  
22 which is in Contra Costa County, not Mountain House.  
23 BBID is in a remote area that is not serviced by any bus  
24 service. So anyone who wanted to participate had to come  
25 in a car.



1           Due to the hard work of the Mountain House  
2 intervenors, they have gotten some members of the  
3 community to come out. Today, no one knows there is an  
4 opportunity to comment now except for those who were  
5 called by intervenors. There will be more testimony and  
6 no public comment after that.

7           Staff's expert witness in environmental justice  
8 has stated his only qualification to do an environmental  
9 justice analysis is that he knows what 50 percent is.  
10 Staff's alternative witness doesn't know what the loading  
11 order is, doesn't know if the project is needed, doesn't  
12 know much about the energy requirements of the state of  
13 California and doesn't know how much of anything about  
14 alternative technology. He actually admitted most of his  
15 testimony was cut and paste.

16           Whether it's the alleged independent judgment of  
17 staff, the hearing officer, the intervenors, the purpose  
18 of these hearings is not the educate the public, maybe we  
19 could have the lawyer help us. What is the purpose of a  
20 public hearing if not to educate the public? The  
21 applicant had plenty of time to start this process  
22 earlier. Instead, they waited until the last minute and  
23 the CEC has bent over backwards to accommodate the  
24 applicant's schedule at the expense of public comment and  
25 public participation rights. We could not question or

1 discuss pre-filed testimony so the applicant and the staff  
2 could close the hearings today.

3           Mr. Celli, you told us the hearings would go  
4 until 2:00 in the morning if necessary. You've  
5 discouraged the public from coming from Sacramento and  
6 told us to use the Web Ex and call in. But then you did  
7 not put the public comment section on the schedule. You  
8 were consistently in a hurry and you told us to educate  
9 ours on our own time. How convenient for you, but that is  
10 not your job. Your job is to protect the public you serve  
11 and not to waste our money. You have made a mockery of  
12 the public and the people you serve. You could have saved  
13 everyone a lot of time and says MEP goes forward and the  
14 public be damned.

15           I hope you are going to have another public  
16 comment section at the end of the evenings for the further  
17 testimony that we are all going to listen to and cringe.  
18 Thank you.

19           HEARING OFFICER CELLI: Thank you for your public  
20 comments. With that is there anyone else on the phone who  
21 wishes to make a public comment?

22           MS. SEFEJUNKU: This is Valentina once again.

23           I just happen to find out about this today, not  
24 quite sure where all the people are supposed to know about  
25 it. It just so happens one of my colleagues lives in

1 Mountain House told me about it as he was leaving for the  
2 day. So I'm glad I'm here. However, I know that there  
3 are several other people who probably don't -- didn't know  
4 about it and would like to comment.

5 HEARING OFFICER CELLI: Well, maybe you could  
6 encourage them to get on the phone.

7 Is there anything further, ma'am?

8 MS. SEFEJUNKU: Until what time would they have  
9 to call in? I am sorry.

10 HEARING OFFICER CELLI: I have no late how late  
11 we're going to go tonight. But 6:00 was the time we set.  
12 Are you looking at your computer?

13 MS. SEFEJUNKU: I am.

14 HEARING OFFICER CELLI: Okay. See down on the  
15 bottom where it says public comment will be heard at 6:00  
16 p.m.?

17 MS. SEFEJUNKU: I do see that. Like I said,  
18 unfortunately someone just happened to tell me about it  
19 today.

20 HEARING OFFICER CELLI: That was the designated  
21 time for today and if we have the opportunity, we may take  
22 public comment later at the end of the proceedings.

23 MS. SEFEJUNKU: Okay.

24 HEARING OFFICER CELLI: Anything further?

25 MS. SEFEJUNKU: No, thank you.

1           HEARING OFFICER CELLI: Thank you for your  
2 comment.

3           PUBLIC ADVISOR JENNINGS: Hearing Officer Celli,  
4 this is Jennifer Jennings.

5           You might want to mention that after the  
6 Presiding Member's Proposed Decision comes out, there's a  
7 30-day public comment period prior to Commission action.

8           HEARING OFFICER CELLI: I don't know if everybody  
9 heard that or not. But the Public Adviser just reminded  
10 me and asked me to remind all of you on the telephone that  
11 our Presiding Member's Proposed Decision, which is what  
12 we're taking evidence in in order to form a basis will be  
13 as soon as we publish that, there is a 30-day period for  
14 the community and for the public to comment on any aspects  
15 of the Presiding Member's Proposed Decision on what we  
16 call the PMPD.

17           So this isn't the last chance. There is public  
18 comment at every hearing, and there will be more. And  
19 after the PMPD comes out and even after the 30-day public  
20 comment, the public can come in and comment to the full  
21 Commission at the business meeting when the matter is  
22 heard.

23           So before I turn back to evidence, is there  
24 anyone else on the phone who would like to make a comment  
25 at this time?

1           Hearing none, then I'm going to close the -- we  
2   can take written public comment at any time. I'm going to  
3   mute all, except the podium. Our mikes were doing so well  
4   for a while. And now all of a sudden they're doing that  
5   cackle noise. But in any even, if we can have the parties  
6   come back. Public comment is over.

7           I have for the record -- I want you to know that  
8   the applicant is here. I have Mountain House is here.  
9   Rajesh Dighe is here. Andy Wilson is here. Rob Simpson  
10  is here. Staff is here. Mr. Carlton and Mr. Mainland  
11  will no longer be with us tonight because all of their  
12  issues have been handled and so they left. Mr. Singh is  
13  here. And I'm waiting for Bob Sarvey.

14           We're going to take hazardous materials next.  
15  Has there been any discussion about whether -- oh, we've  
16  already taken the applicant's hazardous materials. So  
17  we're only going to be taking staff's hazardous materials  
18  expert, Mr. Tyler, who's present. So let's go ahead and  
19  have Mr. Tyler sworn.

20           (Whereupon the witness was sworn.)

21           MR. TYLER: I do.

22           MR. PETTY: Please state and spell your name for  
23  the record.

24           MR. TYLER: Rick, R-i-c-k. Tyler, T-y-l-e-r.

25           MR. GROOVER: Mr. Celli, did you make a change to

1 Mr. Simpson's motion?

2 HEARING OFFICER CELLI: We were just talking  
3 about that. So the motion is denied, however, we will  
4 check in later on and see how we're doing and then maybe  
5 we can re-visit the issue. But in the meanwhile, let's  
6 take as much evidence as we can, folks.

7 MR. DIGHE: Is there a time limit?

8 HEARING OFFICER CELLI: No. There is no time  
9 limit. We are unlimited. Thinks a pre form hearing and  
10 we will go as late as we need to if we can. The record is  
11 4:00. I don't think we're going to beat that record. So  
12 with that, Ms. Willis, please.

13 STAFF COUNSEL WILLIS: Thank you.

14 DIRECT EXAMINATION

15 STAFF COUNSEL WILLIS: Mr. Tyler, was the  
16 statement of your qualifications attached to your  
17 testimony?

18 MR. TYLER: Yes.

19 STAFF COUNSEL WILLIS: Could you briefly state  
20 your education and experience?

21 MR. TYLER: I'm a mechanical engineer and I've  
22 worked in the field of evaluating hazardous materials and  
23 worker safety issues for about 25 years with the  
24 California Energy Commission dealing with flappable  
25 materials, toxic materials, and pressurized systems such

1 as gas pipelines, pressure vessels, and various types of  
2 hazardous materials.

3 MR. SIMPSON: Excuse me. Is that mike on?

4 HEARING OFFICER CELLI: I need you to hold it  
5 closer to your mouth. Is that better? Go ahead with your  
6 direct.

7 STAFF COUNSEL WILLIS: Did you prepare the  
8 testimony entitled hazardous materials management in the  
9 supplemental staff assessment Exhibit 301?

10 MR. TYLER: Yes, I did.

11 STAFF COUNSEL WILLIS: And do the opinions  
12 contained your testimony represent your best professional  
13 judgment?

14 MR. TYLER: They do.

15 STAFF COUNSEL WILLIS: Do you have any changes to  
16 your written testimony that you're proposing today?

17 MR. TYLER: No, other than perhaps the proposed  
18 condition I didn't know whether that was already in the  
19 record or not.

20 STAFF COUNSEL WILLIS: No, it isn't. So if you  
21 could actually introduce that.

22 MR. TYLER: Okay. We've proposed a condition of  
23 certification regarding gas floats to be included in the  
24 testimony.

25 STAFF COUNSEL WILLIS: Thank you. Do changes in

1 your proposed conditions in any way change your overall  
2 conclusions?

3 MR. TYLER: No, they do not.

4 STAFF COUNSEL WILLIS: There have been concerns  
5 raised about the natural gas pipeline. Did you analyze  
6 the natural gas pipeline for this project?

7 MR. TYLER: Yes, I did.

8 STAFF COUNSEL WILLIS: And Mr. Sarvey stated that  
9 the operation -- raised concerns that the operation of  
10 transmission pipelines pose significant public risks when  
11 they're operated in close proximity to areas that are  
12 heavily occupied by the public and that the presence of  
13 the three pipelines in one pipeline corridor triples the  
14 consequence of the failure of lines 002. Did you analyze  
15 this?

16 MR. TYLER: I analyzed the pipeline going from  
17 the project to line 002 and analyzed and only analyzed the  
18 consequences to 1002 within the context of the potential  
19 impacts of the proposed (inaudible) for the project on  
20 that pipeline that would be caused by that pipeline.  
21 There were no modifications to the pipeline and therefore  
22 there are no significant changes and I relied on the  
23 existing regulatory program, which is something we  
24 typically do.

25 STAFF COUNSEL WILLIS: And that kind of falls



1 into my next question. Is there laws, ordinances,  
2 regulations, and standards that address gas pipelines?

3 MR. TYLER: Yes, they are. And they're very  
4 extensive. There are federal regulations that address  
5 pipeline design. Those -- in fact, line 002 is designed  
6 to one of the most recent versions of that regulation.  
7 And those are also administered by also enforced by the  
8 CPUC. And they have their own regulations as well, which  
9 have federal regulations.

10 STAFF COUNSEL WILLIS: In your opinion, does the  
11 project with the proposed Conditions of Certification pose  
12 a significant adverse impacts?

13 MR. TYLER: No, it does not.

14 STAFF COUNSEL WILLIS: And does the project  
15 comply with all laws, ordinances, regulations, and  
16 standards?

17 MR. TYLER: Yes, it does.

18 STAFF COUNSEL WILLIS: Thank you. That concludes  
19 my direct. This witness is available for  
20 cross-examination.

21 HEARING OFFICER CELLI: Mr. Sarvey.

22 MR. SARVEY: Are we presenting to PG&E witness  
23 here as well or just --

24 HEARING OFFICER CELLI: No.

25 MR. SARVEY: There's no PG&E witness?

1 HEARING OFFICER CELLI: No. We were not able to  
2 get a PG&E witness. This is staff's witness.

3 MR. SARVEY: I thought the whole purpose of this  
4 was to hear from PG&E.

5 HEARING OFFICER CELLI: I will tell you that we  
6 spoke with a representative from PG&E and in light of  
7 pending litigation they were not excited about  
8 participating in our hearing.

9 MR. SARVEY: Well, the whole purpose of my  
10 presentation is to talk to folks from PG&E, not -- I  
11 already know his opinion and maybe I can ask him some  
12 questions, but I really --

13 HEARING OFFICER CELLI: Do what you can, but  
14 we're not going to get PG&E.

15 MR. SARVEY: We're not going to get PG&E?

16 HEARING OFFICER CELLI: No.

17 MR. SARVEY: We're not going to get anywhere  
18 then. We won't get anywhere without PG&E. They're the  
19 ones that have knowledge of this pipeline. Mr. Tyler  
20 doesn't have any knowledge of this pipeline.

21 HEARING OFFICER CELLI: Ask him and maybe  
22 establish that and find out.

23 CROSS-EXAMINATION

24 MR. SARVEY: Do you know whether line 002 has  
25 automatic shut off valves?

1 MR. TYLER: I do not.

2 MR. SARVEY: Do you know where the shut off  
3 valves are for line 002?

4 MR. TYLER: I do not.

5 MR. SARVEY: Do you know how many power plants  
6 and large natural gas users are connected to line 002?

7 MR. TYLER: I know it's a significant number. I  
8 do not know exactly how many. There are a lot of  
9 residential communities hooked to it and industrial  
10 facilities (inaudible) major transmission.

11 MR. SARVEY: Are emergency personnel aware of the  
12 location of the shutoff valves and how to operate these  
13 valves for line 002?

14 MR. TYLER: I understand there are efforts  
15 underway to make that more -- so after watching NTSB  
16 hearings, but I'm not sure what their state of knowledge  
17 is today.

18 MR. SARVEY: To your knowledge, do you know if  
19 pressures in pipelines are constant?

20 MR. TYLER: From my understanding, they're  
21 relatively constant. But they're certainly not with one  
22 PSI or something like that. They do flux wait. They do  
23 not fluctuate as a general rule very rapidly. And they  
24 are run at what I would say is nominal pressure.

25 MR. SARVEY: Would the should closure or opening

1 of a valve cause a pressure fluctuation?

2 MR. TYLER: It could. But again, this is not a  
3 compressible fluid in this gas that's compressible. So I  
4 would expect those kinds of changes in pressure to be  
5 dampened in the system over this distance.

6 MR. SARVEY: And your understanding of should  
7 change of pressure in the pipeline is turned over  
8 pressure?

9 MR. TYLER: No. Over pressure would be a  
10 pressure that exceeded the MAOP or the safe operating  
11 pressure of the pipeline.

12 MR. SARVEY: You want to re-think that answer?

13 MR. TYLER: That's my understanding of over  
14 pressure.

15 MR. SARVEY: What would be an acceptable pressure  
16 fluctuations range for a large natural gas pipeline?

17 MR. TYLER: In my opinion, any pressure  
18 fluctuations in any pressure iced system within the  
19 context and particularly with there the context of natural  
20 gas pipeline would have no consequence in the absence of a  
21 pressure fluctuations that exceeded the MAOP or the safe  
22 design level of pressure for that pipeline.

23 HEARING OFFICER CELLI: Let me just ask you, you  
24 just used an acronym: MAOP.

25 MR. TYLER: Maximum allowable operating pressure.

1 HEARING OFFICER CELLI: Thank you.

2 MR. SARVEY: Do you think that California has had  
3 enough regulators in the past few decades for natural gas  
4 pipelines?

5 STAFF COUNSEL WILLIS: Objection. Vague,  
6 speculative. Outside the scope of his testimony.

7 HEARING OFFICER CELLI: Yeah. Let's see if we  
8 can't keep this as it relates to the Mariposa Energy  
9 Project, please.

10 MR. SARVEY: Did you it does relate. His  
11 testimony is re's relying on the regulatory program to  
12 ensure pipeline safety. And I'm asking is there enough  
13 inspectors to enforce that regulatory program.

14 HEARING OFFICER CELLI: If you can answer that.

15 MR. TYLER: The only knowledge I have in that  
16 regard is my recent observations of the NTSB hearings on  
17 the San Bruno incident. And in that regard, there was  
18 some question with regard to resources available. That's  
19 the only knowledge I really have of that.

20 MR. SARVEY: How do you want me to handle these  
21 exhibits? Do you want me to do them under direct?  
22 They're for PG&E. I don't think he'll be able to answer  
23 the questions.

24 HEARING OFFICER CELLI: I'll tell you what. Let  
25 as identify them right now.

1           MR. SARVEY: First of all, the applicant asked me  
2 to provide a copy of the newspaper article where Mr. De  
3 Leon was quoted was saying, "California has shortchanged  
4 enforcement for decades. They never had enough operators,  
5 said De Leon, now a private consultant on pipeline safety.  
6 They said the regulated companies follow the rules without  
7 having to be forced to."

8           HEARING OFFICER CELLI: That was an exhibit that  
9 you had --

10          MR. SARVEY: That was a question that I asked Mr.  
11 De Leon and the applicant asked me for the article the  
12 last hearing when I got that at and I wanted to provide  
13 that as an exhibit.

14          HEARING OFFICER CELLI: So that would be 415,  
15 which is next in order.

16          MR. SARVEY: That would be fine.

17          HEARING OFFICER CELLI: So 415 is an article from  
18 what newspaper?

19          MR. SARVEY: From the San Francisco Chronicle,  
20 November 14th, 2010.

21          HEARING OFFICER CELLI: For the record, Mr.  
22 Sarvey is passing a copy, I presume, to all the other  
23 parties who are present. And I'm going to ask if there's  
24 any objection to -- let me just get all of your hazardous  
25 materials. So exhibits 415 is the newspaper article was

1 Chronicle.

2 STAFF COUNSEL WILLIS: Mr. Celli, one point of  
3 clarification. Is Mr. Sarvey introducing these now to ask  
4 this witness questions based on that?

5 HEARING OFFICER CELLI: He's going to.

6 STAFF COUNSEL WILLIS: He's going to need some  
7 time to review them and.

8 HEARING OFFICER CELLI: Yes. He can give them to  
9 Mr. Tyler now to take a look. Thinks a new exhibit. So  
10 this is Exhibit 415 I haven't seen before. I remember we  
11 discussed it at the last hearing with --

12 STAFF COUNSEL WILLIS: I object to asking  
13 questions of this witness without a sufficient time to  
14 read it and --

15 HEARING OFFICER CELLI: While Mr. Tyler is  
16 reading this article, I wants to clear with you Mr. Sarvey  
17 which -- I have 405 is hazardous materials testimony of  
18 Sarvey, right?

19 MR. SARVEY: That's correct, Mr. Celli.

20 HEARING OFFICER CELLI: Any other hazardous  
21 materials exhibits that you would want to be putting in?

22 MR. SARVEY: Yes, I have this exhibit here. I  
23 have Exhibit 416, which is an e-mail from Kevin Wong to  
24 Alan Eastman of PG&E dated May 6th 2004. Exhibit 416.

25 HEARING OFFICER CELLI: Let me just ask this.

1 Before you give me a new one, I wanted to see -- I only  
2 have Exhibit 405 has your hazardous materials testimony.  
3 Do you have any other hazardous materials that came in on  
4 your prehearing conference statement? In other words,  
5 that I'm not seeing as hazardous materials testimony.

6 MR. SARVEY: No. That's the only thing I had.

7 HEARING OFFICER CELLI: So 415 is the Chronicle  
8 article. 416 is what?

9 MR. SARVEY: 416 is an e-mail from Kevin Wong to  
10 Alan Eastman. It's dated May 6th, 2004. It's pressure  
11 cycling data for line 401.

12 HEARING OFFICER CELLI: Has anyone seen this  
13 before, any of the other parties?

14 MR. SARVEY: No.

15 STAFF COUNSEL WILLIS: No.

16 HEARING OFFICER CELLI: How does this come?

17 MR. SARVEY: I was going to ask PG&E to  
18 authenticate it. But obviously PG&E is not here so I'm  
19 kind of stuck. That's what I'm saying. I expected PG&E.  
20 That's all I prepared for. I didn't prepare for Mr.  
21 Tyler, because I already know his opinion.

22 HEARING OFFICER CELLI: So it's marked for  
23 identification. This is the e-mail from Wong to who?

24 MR. SARVEY: It's Wong to Alan Eastman.

25 And then I had Exhibit 418.



1 HEARING OFFICER CELLI: What's 417?

2 MR. SARVEY: 417 is relief valve record for the  
3 Bethany compressor station.

4 STAFF COUNSEL WILLIS: Mr. Celli, is Mr. Sarvey  
5 passing these out? Because they're not coming this  
6 direction.

7 HEARING OFFICER CELLI: I think he's just  
8 identifying these new exhibits. So we're just going to  
9 identify them for the record. We're not actually arguing  
10 whether or not they'll be received. Do you have a copy --

11 MR. SARVEY: I have a copy of all of them.

12 HEARING OFFICER CELLI: If you would, please,  
13 distribute them to all the parties.

14 MR. SARVEY: 416?

15 HEARING OFFICER CELLI: 415, 416, 417 is the  
16 relief valve record compressor station.

17 MR. SARVEY: Did the Committee get a copy of the  
18 article?

19 HEARING OFFICER CELLI: No. I haven't received  
20 any of these new exhibits. The last thing I got was 414.  
21 The Chronicle article is 415. So Exhibit 416 and 415 I  
22 have not yet seen 417. And you were starting to talk  
23 about Exhibit 418.

24 MR. SARVEY: 417 is relief valve record for the  
25 Bethany compressor station.

1 HEARING OFFICER CELLI: Let's get that  
2 distributed to everyone too, please.

3 STAFF COUNSEL WILLIS: Are there more copies of  
4 417?

5 HEARING OFFICER CELLI: Yes.

6 Mr. Sarvey, I do not have a -- what is 418?

7 MR. SARVEY: 418 is comments from PG&E employee  
8 from McDonald Island audit dated 28th of April 2004.

9 HEARING OFFICER CELLI: From PG&E employee dated  
10 what date?

11 MR. SARVEY: It's dated April 28th, 2004.

12 HEARING OFFICER CELLI: Okay. Anything -- so  
13 I've now received exhibits marked for identification as  
14 415, 416, 17, 18. That is to say I've looked at them.  
15 They're not received into evidence yet.

16 MR. SARVEY: I also have Exhibit 420.

17 HEARING OFFICER CELLI: Wait. What's 419?

18 MR. SARVEY: 419 I'm going to skip.

19 HEARING OFFICER CELLI: Can we call 420, 419?

20 MR. SARVEY: We can, but it's labeled 420.

21 HEARING OFFICER CELLI: I'll cross it out.

22 MR. SARVEY: That's fine.

23 HEARING OFFICER CELLI: I do this so I don't omit  
24 one.

25 MR. SARVEY: I understand.

1 HEARING OFFICER CELLI: So if you could please  
2 describe what 419 is.

3 MR. SARVEY: 419 is an e-mail from Alan Eastman  
4 to Bann Acimis, who is a CPUC employee, and the subject is  
5 the water vapor data.

6 HEARING OFFICER CELLI: Dated?

7 MR. SARVEY: Dated July 26th, 2004.

8 HEARING OFFICER CELLI: 26, 2004. Please  
9 distribute that among the parties and make sure everyone  
10 to mark it as 419, not 420.

11 MR. SARVEY: Did everybody get a copy of the  
12 article?

13 HEARING OFFICER CELLI: Yes. Any other new  
14 exhibits that we're going to mark for identification?

15 MR. SARVEY: That would be my conclusion.

16 HEARING OFFICER CELLI: Okay. Now I take it you  
17 intended to ask Mr. Tyler questions based on these  
18 documents?

19 MR. SARVEY: I intended to ask the PG&E witness  
20 because they would be the ones that could answer these  
21 questions. But unfortunately Mr. Tyler is here and that's  
22 the only person I have to ask. So I guess I ask him the  
23 questions. I don't know how productive this is going to  
24 be.

25 STAFF COUNSEL WILLIS: I'm going to object to

1 this in general. First of all, these exhibits were just  
2 introduced today when there was plenty of discussion that  
3 all of the exhibits needed to be in by the prehearing  
4 conference.

5 Second of all, these are e-mails from other  
6 people, not to or from Mr. Tyler. Exhibit 418 is comments  
7 by a PG&E employee. It's not identified who it's from.  
8 Mr. Tyler we can spend a lot of time tonight --

9 HEARING OFFICER CELLI: Let's get right to the  
10 choice. Why were these not part of the prehearing  
11 conference statement, Mr. Sarvey?

12 MR. SARVEY: Because I need PG&E to authenticate  
13 them.

14 HEARING OFFICER CELLI: Okay. And is there any  
15 other reason?

16 MR. SARVEY: Well, I was hoping to have a PG&E  
17 witness here that I could present them to and get expert  
18 opinion on their power plant and how it's operating.

19 HEARING OFFICER CELLI: Okay. Well, the  
20 objection is well taken. These documents are untimely.  
21 They are documents that have been in existence some of  
22 them since 2004, it appears. I don't know when Sarvey  
23 obtained them. But in light of their late entry, unless  
24 you can get a stipulation from all the parties and it  
25 doesn't like you're going to get one, the Committee is not

1 inclined to admit this evidence now.

2 MR. SARVEY: Then we're not going to have any  
3 discussion at all of hazardous materials then.

4 HEARING OFFICER CELLI: I'll take that back. The  
5 exhibit number 415 was discussed at the evidentiary  
6 hearing. It was used to cross-examine Mr. De Leon. And I  
7 don't -- I'll hear from the parties applicant any  
8 objection to 415.

9 MR. WHEATLAND: Certainly we would object to 415.  
10 The Commission simply does not allow newspaper articles  
11 into evidence.

12 HEARING OFFICER CELLI: That's not true.

13 MR. WHEATLAND: Well, the Commission to my  
14 knowledge the Commission does not. The report are here  
15 that's whose statements are contained in this article is  
16 not available for cross-examination. And that's  
17 particularly important with respects to the quotes of Mr.  
18 De Leon because the passage that Mr. Sarvey read to him  
19 last time you'll see is not even attributed to Mr. De Leon  
20 in quotes. Instead, it's not something that the reporter  
21 is saying he said verbatim. It's the reporter's  
22 characterization.

23 "De Leon, who ran the U.S. Pipeline and Hazardous  
24 Materials Safety Administration Predecessor Agency for  
25 five years before retiring in 1997 and goes onto say said,

1 'California has short changed enforcement for decades.'"

2 But that statement is not even in quotes. And so  
3 this is really double hearsay. Hearsay by a reporter who  
4 isn't even directly quoting or attributing from Mr. De  
5 Leon. So we think this newspaper article would be  
6 particularly inappropriate to include either that passage  
7 or the article in its entirety.

8 HEARING OFFICER CELLI: Any objection to 415 from  
9 Mountain House?

10 MR. GROOVER: I have no objection. I believe the  
11 applicant asked to know which newspaper article it was and  
12 all Mr. Sarvey has done is brought in the newspaper  
13 article that he was using and I think the applicant asked  
14 him which one it was.

15 HEARING OFFICER CELLI: So do you object to its  
16 admission?

17 MR. GROOVER: No.

18 HEARING OFFICER CELLI: Mr. Dighe, any objection  
19 to exhibit 415?

20 MR. DIGHE: No objection.

21 HEARING OFFICER CELLI: Mr. Wilson, any  
22 objection?

23 MR. WILSON: No objection.

24 HEARING OFFICER CELLI: Any objection by Mr.  
25 Singh?

1 MR. SINGH: No objection.

2 HEARING OFFICER CELLI: Any objection by Mr.  
3 Simpson?

4 MR. SIMPSON: I don't have an objection to this,  
5 but I do have an objection I'd like to voice when we're  
6 done with it.

7 HEARING OFFICER CELLI: But it has nothing to do  
8 with 415?

9 MR. SIMPSON: Correct.

10 HEARING OFFICER CELLI: And staff, you object?

11 STAFF COUNSEL WILLIS: We object. And I'm object  
12 to having Mr. Tyler cross-examined on this article. I  
13 mean, it was the basis of a cross-examination. We didn't  
14 have the article in front of us. Mr. Sarvey had it on his  
15 computer when he was doing the cross-examination of the  
16 applicant's witness. It's not about -- it's not Mr. Tyler  
17 being quoted or cited. So to ask this question besides  
18 the fact it's late in coming and there's -- the writer is  
19 not available to be cross-examined, it's also an issue of  
20 relevance to this witness.

21 HEARING OFFICER CELLI: Okay. We're going to go  
22 off the record for a moment, folks. So bear with us for  
23 just a moment.

24 (Off record.)

25 HEARING OFFICER CELLI: We're looking at these

1 exhibits. I wonder if you might want to explain to us  
2 where these exhibits came from and how you intended to use  
3 them.

4 MR. SARVEY: First of all, as was mentioned in my  
5 resume, I was the intervenor in CPUC proceeding related to  
6 these three pipelines in this corridor. There's three  
7 pipelines, not just this one pipeline. They're all in  
8 this corridor. They're in 50 feet of each other. And  
9 these documents here were part of a public records request  
10 that I had done --

11 HEARING OFFICER CELLI: To whom

12 MR. SARVEY: This was discovery during a  
13 proceeding and PG&E provided me with all these documents.  
14 I also have probably a authorize documents from CPSD,  
15 Consumer Public Safety Division, of the PUC. But PG&E was  
16 very nicely paginated their documents so I didn't bring in  
17 the CPUC documents, because they weren't paginated. So  
18 they're hard to refer to. But basically --

19 HEARING OFFICER CELLI: So you thought --

20 MR. SARVEY: I was going to bring a PG&E witness  
21 in here and first I was going to explain to you how the  
22 Bethany compressor station works. I have a diagram of the  
23 Bethany compressor station here. But I was going to  
24 present it to him and have him explain to you how Bethany  
25 Compressor Station works which is what this project is



1 connected to.

2 HEARING OFFICER CELLI: But here's the question I  
3 have. What prevented you from putting that in the  
4 prehearing conference?

5 MR. SARVEY: Because I didn't have any idea that  
6 you were going to have a PG&E witness for me to  
7 cross-examine.

8 HEARING OFFICER CELLI: Well, we don't.

9 MR. SARVEY: I figured that out about after I  
10 spent two days preparing for him, spent maybe 60 bucks on  
11 copies. Now I find out he's not here. I'm disappointed.  
12 A good 16 hours of my time.

13 HEARING OFFICER CELLI: Why didn't you put in the  
14 16 hours before the prehearing conference statement so it  
15 would have been part of your prehearing conference  
16 statement because it's the settlement information?

17 MR. SARVEY: Because it's worth less without a  
18 PG&E employee to authenticate the documents.

19 HEARING OFFICER CELLI: What did you think there  
20 wasn't going to be one when you submitted your prehearing  
21 conference and there was going to be one after you  
22 submitted it?

23 MR. SARVEY: Because we had a workshop, and the  
24 PG&E guy showed up and then I forget how it was indicated  
25 to be a -- at the workshop they said the PG&E employee was

1 going to be here at the hearing. So I prepared this  
2 stuff.

3 HEARING OFFICER CELLI: Were you at this  
4 workshop, Ms. Willis?

5 STAFF COUNSEL WILLIS: Yes. As was stated in our  
6 brief that we invited the PG&E to come, but I'd also heard  
7 from the Committee that that was a possibility for today  
8 as well but that was never --

9 HEARING OFFICER CELLI: Who showed up for PG&E at  
10 your workshop? Was it Mr. Galati?

11 MR. SARVEY: No it was a PG&E employee.

12 STAFF COUNSEL WILLIS: Mr. Weiseman from Mr.  
13 Galati's office. But also a PG&E representative was  
14 there. But there was never a promise by staff to have him  
15 here. Because we don't have that control.

16 MR. SIMPSON: If I may?

17 HEARING OFFICER CELLI: Who's speaking?

18 MR. SIMPSON: It's Rob Simpson.

19 HEARING OFFICER CELLI: Go ahead.

20 MR. SIMPSON: The PG&E pipeline supposed expert  
21 that had appeared at the workshop after our hearing that  
22 determined that this was worthy of consideration, it seems  
23 this is where it's extending from to me that before the  
24 prehearing conference, we didn't know there was going to  
25 be a workshop. We didn't know there was going to be PG&E

1 expected to testify tonight. And we didn't know before  
2 tonight that PG&E wasn't going to testify. Apparently the  
3 Commission knew and that would have been good information  
4 for us to have.

5           So -- I would object to this proceeding  
6 continuing without PG&E getting some verification that the  
7 pipeline is safe.

8           HEARING OFFICER CELLI: So we'll go off the  
9 record again.

10           (Off record.)

11           HEARING OFFICER CELLI: Let's not forget where we  
12 are. We're in the middle of Mr. Sarvey' cross-examination  
13 of Mr. Tyler.

14           So Mr. Sarvey, the Exhibit 415 would be received  
15 by the Committee into evidence. However, Exhibits 405  
16 would be received as well. 405 and 415 are received into  
17 evidence.

18           (Whereupon the above-referenced exhibits  
19 were received into evidence by the Hearing  
20 Officer.)

21           MR. SARVEY: I also have 413 and has been  
22 pre-filed and everybody has a copy of it. 413 is on my  
23 exhibit list. That's a continuation of the documents that  
24 I've presented here.

25           HEARING OFFICER CELLI: 416 through 419 will not

1 be received into evidence. The reason is is that they're  
2 here say. They lack authentication. They lack  
3 foundation. There's no competent witness who can  
4 authenticate these documents to lay a foundation. And  
5 therefore the Exhibits 416 through 419 will not be  
6 received into evidence.

7 MR. SARVEY: Can I take you up on your offer to  
8 explain why they're here?

9 HEARING OFFICER CELLI: Well, at this point we're  
10 not receiving them. We've got a ruling. So it's -- you  
11 know, we get the sense, obviously, that you have received  
12 some documents. But there's nobody here unless you've got  
13 Kevin Wong or Alan Eastman to come in and talk about what  
14 these -- what that e-mail was about. This 417 has no  
15 documentation whatsoever as to what it's talking about.  
16 There is no identification of the line. There is no  
17 signatures. And half of it's cut off or at least some  
18 section of it.

19 MR. SARVEY: As I said, I needed PG&E to  
20 authenticate it.

21 HEARING OFFICER CELLI: There's comments by PG&E  
22 employee. We don't get the employee's name or any  
23 identification or signature or anything.

24 MR. SARVEY: When you have an audit, that  
25 information is confidential.

1 HEARING OFFICER CELLI: Okay. Well, same here.  
2 E-mail from Alan Eastman to Bann Acimis is I guess. If  
3 you're not going to have these people here, how are we  
4 going to authenticate these documents?

5 MR. SARVEY: I don't know. I expected you to  
6 bring somebody from PG&E to authenticate them. But I  
7 obviously was incorrect.

8 HEARING OFFICER CELLI: Well, we are not a party.  
9 With that, 416 through 419 are marked for identification  
10 but will not be received into evidence.

11 MR. DIGHE: Mr. Celli, I want to say something.

12 HEARING OFFICER CELLI: Yes?

13 MR. DIGHE: So there is a court proceeding and  
14 there is an administrative hearing.

15 HEARING OFFICER CELLI: Yes.

16 MR. DIGHE: Either one of them, if there is a  
17 life threatening situation -- if there is evidence in the  
18 laws which says that the pipeline is not safe, basically  
19 you have to get these evidence into and I think --

20 HEARING OFFICER CELLI: That's a  
21 misunderstanding. Let me defuse you of that. This  
22 Committee is here to take into evidence and the evidence  
23 has to be competent evidence. And hearsay is not  
24 competent evidence and is insufficient in it to support a  
25 finding. All of this is hearsay. It's out of court

1 statements offered to prove the truth of the matter  
2 asserted within the document. There is no one here to  
3 authenticate it. There is no foundation. This may be  
4 true. But you know the story of the boy who cried wolf.  
5 It would have been true there was a wolf, but you know  
6 something, you have to lay a foundation for the wolf.

7 MR. SINGH: Mr. Celli, let me offer statement  
8 (inaudible) argument. FBE go for every lead and they only  
9 get .1 person successful lead. Any lead comes to them,  
10 they do not authenticate it. And only .1 successful rate  
11 is there.

12 HEARING OFFICER CELLI: Let's be clear about  
13 something. The FBI is an organization designed to  
14 investigate crimes where life and liberty are at stake.  
15 Thinks an administration hearing where life and liberty  
16 and property are not at stake.

17 MR. SINGH: But it is very clear it is at stake  
18 right now whether these documents are incorporated  
19 authenticated but somebody has to take a burden to  
20 authenticate the documents.

21 HEARING OFFICER CELLI: That's correct. And the  
22 burden is on the proponent of the evidence. And the  
23 proponent can't lay a foundation and can't authenticate  
24 the evidence. The evidence cannot come in.

25 MR. SINGH: Mr. Celli, a person is behind the

1 bars for 20 years and after ten years some evidence is  
2 found, right? Whether it's correct or not again the trial  
3 starts and they make -- if it is successful then the  
4 person goes out of the bar.

5 HEARING OFFICER CELLI: No. There is an appeal.  
6 There is all sorts of legal foundation that must be laid.

7 MR. SINGH: You mean to say we have to go to the  
8 appeal route on this? Is that what you're suggesting.

9 HEARING OFFICER CELLI: To take a what?

10 MR. SINGH: To take an appeal route on this?

11 HEARING OFFICER CELLI: No. Listen, you can  
12 appeal this if you want. But there is a ruling. Our job  
13 is to get up here and listen to the evidence and make  
14 determination as to whether the evidence is admissible or  
15 not admissible. Our evidence is -- our regulations are  
16 pretty permissive in allowing evidence. But you still  
17 have to lay a foundation. You still have to authenticate  
18 documents. We cannot but our regulations rely on hearsay  
19 evidence in the absence of our competent evidence to which  
20 it would be supplemental. But there isn't such evidence  
21 and it's not going to happen. So for that reason, that  
22 evidence will be excluded. So that is the basis of the  
23 ruling.

24 Now, we are in the middle of Bob Sarvey's  
25 cross-examination of Rick Tyler.

1           MR. SIMPSON: I'm sorry. I would like to make a  
2 motion that we subpoena PG&E to testify.

3           MR. SINGH: I second the motion.

4           HEARING OFFICER CELLI: The motion -- let me go  
5 off the record for a moment.

6           (Off record)

7           HEARING OFFICER CELLI: Okay, folks. Mr.  
8 Simpson, would you come forward, please. Have a seat.

9           The Committee needs to hear what the basis of  
10 your motion is for the subpoena.

11          MR. SIMPSON: Good. Thank you.

12          I'm not -- we had a workshop. I understand that  
13 the regulatory structure has been examined and the  
14 regulations say that we're all going to be safe. But it  
15 appears that no one here has actually looked at line 102  
16 or the reports that were done on line 102 or anything of  
17 authentic nature with respect to the pipeline. If we  
18 are going to consider is this pipeline safe for this  
19 project, we don't have the expertise in this room to  
20 figure that out from what I've heard at the workshop.

21          PG&E is the one who owns the pipeline. PG&E is  
22 the one who operates the pipeline, supplies the gas for  
23 this project and they should be able to come here and  
24 typographical us, yeah, that's going to be okay. That's  
25 going to be safe. But if the contention is well, PG&E is



1 not going to come here and testify because of the lawsuit  
2 for the last bunch of people they killed, then I think  
3 that should be given weight. If PG&E is going to get off  
4 the hook but not testifying because there could be  
5 liability associated with this pipeline, then the  
6 Commission should either make a determination that the  
7 pipeline is not safe or make a subpoena and call PG&E to  
8 testify.

9 HEARING OFFICER CELLI: Okay. Go ahead,  
10 applicant.

11 MR. WHEATLAND: I just want to say briefly that  
12 Mr. Simpson is incorrect when he says that no one has  
13 examined line 102 or testified with respect to its safety.

14 We offered a witness here at the last hearings  
15 who is an undisputed expert on issues of pipeline safety.  
16 He headed the federal agencies that oversaw pipeline  
17 safety for many years. And he testified specifically to  
18 the safety of line 102 and the safety of interconnecting  
19 this project to PG&E as system. So to say that no one has  
20 spoken to this simply is simply not true.

21 Second of all, with respect to PG&E and the  
22 subpoena, we originally made a motion to strike this  
23 testimony because we believe that these issues are outside  
24 the jurisdiction of the Commission. And the subpoena  
25 raises exactly the question of whether this Commission has

1 regulatory jurisdiction over PG&E to compel their presence  
2 before this agency to answer questions about the safety of  
3 their system. We believe the Energy Commission does not  
4 have that jurisdiction and that if a subpoena were to  
5 issue, PG&E could successfully resist it.

6 MR. DIGHE: I Have to say something here.

7 HEARING OFFICER CELLI: Hold it for a moment.

8 Mr. Sarvey, you had a comment?

9 MR. SARVEY: I did have a comment.

10 First of all, Mr. Wheatland has mischaracterized  
11 his expert's testimony. His expert admitted he hasn't  
12 seen line 002. He hadn't looked at the peaking  
13 information. He had no information at all on line 002.  
14 So that's a mischaracterization. Another  
15 mischaracterization is Mr. Wheatland says there is no  
16 quotation on Mr. De Leon testimony in this article. If  
17 you turn to page five of eight, you can see the quotation  
18 marks.

19 HEARING OFFICER CELLI: That article was  
20 received.

21 MR. SARVEY: Okay. And you know, I just wanted  
22 to clear up what Mr. Wheatland was saying that did not  
23 reflect what the record had --

24 HEARING OFFICER CELLI: Mr. Dighe.

25 MR. DIGHE: I specifically had asked the

1 applicant's expert around if he knew about the conditions  
2 of line 002 and he clearly said at the time he had no  
3 idea. He was giving a general pipeline professional  
4 experience and his -- he had no insight into this specific  
5 pipeline.

6 HEARING OFFICER CELLI: To line 002. Mr. Singh  
7 go ahead.

8 MR. SINGH: For line 002 when we asked the very  
9 specific question have you looked into the maintenance  
10 record of that and he said no. So without looking into  
11 the maintenance record how somebody can say this pipeline  
12 is safe and that's there in the transcripts.

13 HEARING OFFICER CELLI: Anything further Mr.  
14 Simpson on the motion for a subpoena to subpoena PG&E  
15 witnesses?

16 MR. SIMPSON: Sure. The article that has been  
17 admitted into the record indicates that the applicant's  
18 expert has concerns with pipeline safety. We're not  
19 getting to the answer of is the pipeline safe by going  
20 around this room. No one in this room has the answer.  
21 PG&E has the answer. It's appropriate that they respond.

22 HEARING OFFICER CELLI: Well --

23 MR. GROOVER: I'm sorry but I can't let this go  
24 but may I address Mr. Sarvey's point?

25 HEARING OFFICER CELLI: Sure.

1           MR. GROOVER: I'd like to quote to you from the  
2 transcript of the last evidentiary hearing in which Mr. De  
3 Leon testified. And I believe the page number is 250.  
4 And the question by Mr. Sarvey is: "So you're not aware  
5 of the current condition of pipeline 002?"

6           Answer: "I'm aware of what the pig results  
7 were."

8           MR. SIMPSON: I'm sorry. Do we have a copy of  
9 that transcript?

10          MR. WHEATLAND: That's served on all the parties  
11 in this proceeding.

12          HEARING OFFICER CELLI: So here's what we're  
13 going to do, folks, to keep moving, please. The motion by  
14 Rob Simpson to for the Committee to subpoena  
15 representative from PG&E is under submission. And we will  
16 deal with that and report back to the parties. In the  
17 mean time, Mr. Sarvey, if you can continue with your  
18 cross-examination of Mr. Tyler.

19          MR. SARVEY: Thank you, Mr. Celli.

20          Mr. Tyler, I want to bring your attention to I  
21 believe it's exhibit 415, page 5. And there's some quotes  
22 here from Mr. De Leon and says they never had enough  
23 inspectors. Do you agree with that statement that  
24 California has always had adequate inspection?

25          MR. TYLER: Basically, I have never evaluated the

1 adequacy of the CPUC as inspection program. And I'm not  
2 an expert in evaluating the program. I can say that my  
3 observations of the NTSB hearings which I observe  
4 personally indicate that the CPUC believes they have  
5 resource limitations and that is not inconsistent with  
6 what's being said here. They also argue that their  
7 program is effective on some other basis. I have no way  
8 of telling based on this article without my personal  
9 attention to evaluate that specific program. The article  
10 also goes to the idea that there was supposedly a better  
11 program in Washington. (inaudible) of the pipe names. We  
12 don't know anything that would allow us to make that  
13 conclusion.

14 HEARING OFFICER CELLI: What we will do is I'm  
15 going to ask Mr. Singh to slide over next to Andy Wilson  
16 and present now on I'm just going to have all of the  
17 witnesses in this corner spot. We are done with panels  
18 now any way. We're going to just take individual  
19 witnesses from here on out I think.

20 Okay, while we're getting set up here, we're  
21 going to go off the record for a moment.

22 (Off record.)

23 HEARING OFFICER CELLI: Do you have any further  
24 questions of staff's witness?

25 MR. SARVEY: Yes, I do.

1           HEARING OFFICER CELLI: Did you have something  
2 you wanted to get to before I proceeded?

3           HEARING OFFICER CELLI: Okay. We are going to  
4 interrupt for a moment.

5           Mr. Galati, if you wouldn't mind coming on up.  
6 That's Mr. Simpson's seat. Why don't you come on up here.  
7 Is this mike operable here to you, Mr. Petty?

8           We have Scott Galati present. So if you could  
9 turn on the mike and identify yourself and why you're  
10 here, Mr. Galati.

11          MR. GALATI: My name is Scott Galati, and I  
12 represent PG&E.

13          HEARING OFFICER CELLI: Could you -- I don't know  
14 if you were aware, but there was a motion pending -- is my  
15 mike still working?

16          There is a motion pending that the Committee  
17 subpoena a representative from PG&E to testify with regard  
18 to line 002 and we're going to ask if you have any  
19 information about that or in response to such a motion  
20 we'd like to hear from PG&E.

21          MR. SIMPSON: May I have a point of order? Two  
22 things really, was there ex parte communication between  
23 the Commission and Mr. Galati?

24          HEARING OFFICER CELLI: He's not a party. So the  
25 answer is no. Any other questions?

1 MR. SIMPSON: Yes. Has he been sworn?

2 HEARING OFFICER CELLI: No. He's not a witness.

3 MR. SIMPSON: He's --

4 MR. GALATI: In addition for the record, I'll  
5 clarify I was listening in my office. I was here earlier  
6 this morning. I don't know if you saw me lurking around.  
7 I was here earlier this morning and I was listening in my  
8 office. When I heard the issue of PG&E and subpoena I got  
9 in my report and I've come to address that.

10 HEARING OFFICER CELLI: Please do.

11 MR. GALATI: Again, I represent PG&E. We  
12 discussed this at some length whether or not PG&E would  
13 participate in this proceeding.

14 First, I need to explain to you the foundation  
15 for our reasons for saying that no, we will not  
16 participate in this proceeding.

17 First of all, there are three -- I have them  
18 here. I can read them into the record. There's the rate  
19 case that's going on for PG&E for gas rates, 0909013 at  
20 the Public Utility Commission that has recently added a  
21 safety phase to identify and include all the safety  
22 measures that are necessary for our rate case.

23 There was also on 2-25-2011 the Public Utilities  
24 Commission instituted an order instituting rulemaking  
25 1102019 for the sole purpose of evaluating whether general

1 order 112 I believe it is and all of the regulations for  
2 gas pipelines should be modified in light of the San Bruno  
3 incident.

4           There was also on the 24th of 2011 an order  
5 instituting investigation identified as 1102016 at the  
6 Public Utility Commission specifically for looking at and  
7 investigating the San Bruno incidents and PG&E's  
8 operations. There as also a National Transportation  
9 Safety Board proceeding investigating that issue as well  
10 as doing a general review of all of the pipeline issues  
11 that are nationwide. Many of you may know general order  
12 the Public Utility Commission incorporates those federal  
13 regulations. So there is a comprehensive review that is  
14 taking place.

15           We are participating in all of those. With  
16 believe that's the proper forum. And the reason we  
17 believe that's the proper forum is we believe until there  
18 is evidence that the project actually impacts the PG&E  
19 system, the Energy Commission's jurisdiction both  
20 permitting and CEQA I think stop. That as our position.  
21 And on that ground, we would object and resist any  
22 subpoena to participate beyond that point of  
23 interconnection.

24           We participate at the public workshop to the  
25 extent we could. And then when these orders instituted



1 proceedings came in, they were going to participate in  
2 this. This is the forum in which we can discuss those  
3 items. I can talk to anybody afterward if you want to  
4 know how to become involved in these items and where they  
5 are at the public utility Commission. But that's as far  
6 as we can go.

7 HEARING OFFICER CELLI: Thank you, Mr. Galati.

8 So what happens when the Energy Commission  
9 subpoenas -- you actually already testified. You just  
10 said you'll resist it. You'll resist any subpoena.

11 MR. GALATI: We could definitely participate in  
12 the issues of the pipeline up to the first points of  
13 interconnection for the new pipeline. But everything down  
14 the stream after that we believe is properly in other  
15 forums.

16 HEARING OFFICER CELLI: Okay. Thank you for that  
17 Commission.

18 The matter is still under submission. We're  
19 going to hear from Mr. Sarvey. He's got more questions of  
20 Rick Tyler.

21 MR. SARVEY: Do we get to ask Mr. Galati any  
22 questions?

23 HEARING OFFICER CELLI: You know, something?  
24 He's here voluntarily. He's not a witness.

25 MR. SARVEY: This is my big chance.

1           HEARING OFFICER CELLI: He generously made  
2 himself available to talk to anyone afterwards and I think  
3 that as good as you're going to get here.

4           MR. SARVEY: Thanks for coming, Mr. Galati.

5           HEARING OFFICER CELLI: Mr. Sarvey, you were in  
6 the middle of your cross-examination.

7           MR. SARVEY: Yes, I was.

8           HEARING OFFICER CELLI: Or perhaps near the end  
9 of your cross-examination of Mr. Tyler.

10          MR. SARVEY: Your testimony is that line 002 is  
11 safe because of the current regulatory structure and  
12 program; is that correct?

13          MR. TYLER: That's my opinion, yes.

14          MR. SARVEY: And you also said when I asked you a  
15 question about Mr. De Leon's statement you said you had  
16 not analyzed the adequacy of the CPUC and inspection  
17 program?

18          MR. TYLER: That's correct.

19          MR. SARVEY: Now, would you agree that Mr. De  
20 Leon will be aware of the safety of California's  
21 regulatory program since he was Mr. Wheatland has some  
22 glowing statements about him being at the head of the  
23 pipeline safety administration, would you agree he  
24 probably has a pretty good idea of what the regulatory  
25 program and the success of the regulatory program in

1 California is all about?

2 MR. TYLER: Based on his qualifications, yes. I  
3 think if I could, I would like to back up just a second  
4 and say that the existing regulatory program goes far  
5 beyond just inspections. Another aspect of my analysis  
6 was that I believe very firmly that any change caused by  
7 this interconnection would be very localized if at all.  
8 And that the area where this interconnection occurs is  
9 very remote. It's unpopulated. The nearest residents are  
10 more than 3,000 feet away from I. Under those  
11 circumstances, even under the worst case, loss of  
12 containment, I do not believe that it would result in  
13 impacts on public health and safety.

14 Furthermore, in addition to any regulatory  
15 program that CPUC runs as far as inspections, the primary  
16 responsibility rests with PG&E for maintenance and safety  
17 of that line. There is an extensive program that requires  
18 pigging and other inspection activities on the part of  
19 PG&E.

20 This pipeline was built in the 1970s. It  
21 represents modern state of the art codes. It is piggable.  
22 And it is of what I would consider modern design vintage.

23 Based on that, I would argue that there really is  
24 no significant risk in my opinion that this  
25 interconnection is going to cause a failure of that line.

1 That's my professional opinion.

2 MR. SARVEY: Thank you. Back to my original  
3 question. Would you agree that Mr. De Leon would be aware  
4 of the safety of the California regulatory program in his  
5 position as deputy director of pipeline safety  
6 administration program?

7 STAFF COUNSEL WILLIS: I'm going to object. Mr.  
8 De Leon has already testified. Mr. Sarvey could ask Mr.  
9 De Leon what he knows. I'm not sure why he as asking Mr.  
10 Tyler what Mr. De Leon knows.

11 HEARING OFFICER CELLI: What's the relevance of  
12 Mr. Tyler's opinion of Mr. De Leon's qualifications?

13 MR. SARVEY: Because I'm about to read to him  
14 what Dr. De Leon said about California's regulatory  
15 program and I'm wanting to know if Mr. Tyler respects his  
16 opinion.

17 MR. WHEATLAND: If he reads from that, I would  
18 object to that, because the article is clearly hearsay.  
19 Mr. De Loen was here and Mr. Sarvey had a full opportunity  
20 to question him with regard to that article. It would be  
21 entirely inappropriate to question this witness regarding  
22 that hearsay article.

23 HEARING OFFICER CELLI: So --

24 STAFF COUNSEL WILLIS: I second that objection.

25 HEARING OFFICER CELLI: Here's what we'll -- so

1 the objection -- first of all, we haven't heard the  
2 question yet. I would sustain the objection to the last  
3 question, which was asking Mr. Tyler to speculate about  
4 the capacity of Mr. De Leon.

5 The next question you can ask I suppose since  
6 he's an expert witness you can ask a hypothetical if  
7 somebody said X, how would you in your professional  
8 experience as an expert react or what's why are response  
9 or something like that? You could do that.

10 MR. SARVEY: Haven't you already admitted this  
11 document as evidence into the record?

12 HEARING OFFICER CELLI: Yes.

13 MR. SARVEY: And I can't question off this dock.

14 HEARING OFFICER CELLI: This witness has nothing  
15 to do with that article.

16 MR. SARVEY: I'm going to ask him if he agrees  
17 with it.

18 HEARING OFFICER CELLI: Isn't that argumentative?

19 MR. SARVEY: I don't think I'm being  
20 argumentative. But I can ask it if another way if you  
21 like.

22 HEARING OFFICER CELLI: I think that you can ask  
23 him a question that relates to his expertise and you can  
24 ask him about what his opinions are about --

25 MR. SARVEY: Mr. Tyler, do you believe a good

1 enforcement program requires inspection?

2 MR. TYLER: It might. I don't know what the  
3 relative effectiveness -- and I have not evaluated that  
4 what the relative effectiveness of personal or you might  
5 say CPUC employees inspecting PG&E's system. There as  
6 also as I stated extensive testing done in terms of  
7 pigging, which is probably at least in my opinion is very  
8 likely to be more effective. So I have some questions  
9 about that in the absence of my looking at what sort of  
10 problem abilities there are that PG&E inspectors actually  
11 identify problems with the pipeline that would lead to  
12 failure. I don't have and have not analyzed that.

13 MR. SARVEY: Okay. That's fair enough.

14 Do you think that if California didn't have  
15 enough inspectors that that could be a problem?

16 MR. TYLER: Again, it calls for speculation on my  
17 part. In the absence of knowing how effective those  
18 particular inspectors are and what the probability is that  
19 they are actually identifying significant issues that  
20 would lead to failure, it's hard for me to make a  
21 determination. It's just not possible.

22 MR. SARVEY: Do you know if line 002 has been  
23 pigged beyond the Bethany compression err station?

24 MR. TYLER: I don't and actually --

25 HEARING OFFICER CELLI: You answered the

1 question. Let's move on.

2 MR. SARVEY: Okay. Do you know what the  
3 consequence radius is from a 36-inch natural gas pipeline?

4 MR. TYLER: I don't believe that the code  
5 addresses consequence radius. The way the code is  
6 designed is that if a line goes in close proximity to a  
7 population, if the area is you might say heavily populated  
8 or moderately populated, then the design of the paper lean  
9 in that location is either improved or the pressure is  
10 reduced.

11 Generally, since the pipelines operate at like I  
12 said pretty much constant pressures over the pipeline,  
13 it's typical that the pipeline design is increased  
14 (inaudible) so that the margin between the MOAP and  
15 actual -- and the actual stress that would cause the  
16 possibility of failure is increased dramatically. In some  
17 cases, it's 30 percent of the yields strength. In some  
18 cases, it's 50, 60 and at maximum, 70 or 80.

19 So I don't see the ability to determine the  
20 radius of impact. It would really depend on a lost  
21 factors. Really, what's more important is my  
22 determination in terms of the safety of the pipeline. And  
23 that's really addressed more by this idea that the  
24 pipeline's design is -- there's greater scrutiny of that  
25 design and it's designed better in locations where you

1 have high consequence areas.

2 MR. SARVEY: Have you seen the crater that was  
3 created by the 30-inch gas line that exploded in San  
4 Bruno?

5 MR. WHEATLAND: Objection. Relevance.

6 STAFF COUNSEL WILLIS: Objection.

7 HEARING OFFICER CELLI: I was called away and I  
8 need to -- what was the question?

9 MR. SARVEY: The question I asked him if he had  
10 seen the size of the crater that occurred from the San  
11 Bruno explosion of the 30 --

12 HEARING OFFICER CELLI: The objection was  
13 relevance?

14 MR. WHEATLAND: Yes.

15 HEARING OFFICER CELLI: Sustained.

16 MR. SARVEY: Have you seen any information  
17 related to pressure fluctuations on line 002 or line 401?

18 MR. TYLER: No. Other than what was just  
19 provided, which I don't know is part of the record or not.

20 MR. SARVEY: What prevents high pressure lines  
21 from exceeding their maximum operate implementing  
22 pressure?

23 MR. TYLER: There are several things that would  
24 normally do that. One is some sort of an automated  
25 operating system. There's also operators that monitor the



1 system. There is alarms that would give operators  
2 indication that there is some sort of -- the line is  
3 approaching those levels. There are pressure relief  
4 valves in the system that are designed to prevent those  
5 sort of exceedances. So there is many, many things go to  
6 operating the pipeline within a safe operating limits.

7 MR. SARVEY: Do you have any knowledge of whether  
8 PG&E has some issues with their relief valves at the  
9 Bethany compressor station?

10 MR. TYLER: I do not.

11 MR. SARVEY: Earlier and correct me if I'm  
12 misquoting you -- it wasn't exactly you. It was actually  
13 your attorney said that you didn't see any problem with  
14 having multiple pipelines in the pipeline easement; is  
15 that a correct characterization of -- maybe that's her  
16 testimony.

17 MR. TYLER: What I would say is for the area of  
18 the interconnection on this project, it's not an issue,  
19 because as I've stated before, even if you had a worst  
20 case rupture of the pipeline in the vicinity of the  
21 interconnection, there is a potential for impact.

22 MR. SARVEY: So are you aware that there is an  
23 18-inch could you code a pipeline in this pipeline  
24 easement?

25 MR. TYLER: I'm not. But it wouldn't change my

1 opinion.

2 MR. SARVEY: Okay. I'm going to turn your  
3 attention to Exhibit 413, page --

4 HEARING OFFICER CELLI: 413 is a CPUC data  
5 response.

6 MR. SARVEY: Actually, strike that. PG&E would  
7 be Exhibit 413, page 300. I apologize.

8 HEARING OFFICER CELLI: How many more questions  
9 do you have, Mr. Sarvey?

10 MR. SARVEY: A few more.

11 HEARING OFFICER CELLI: How many a few?

12 MR. SARVEY: Three or four.

13 HEARING OFFICER CELLI: Let's make it three,  
14 please.

15 MR. SARVEY: I'll do my best.

16 HEARING OFFICER CELLI: We're going to hold you  
17 to three.

18 MR. SARVEY: PG&E, page 300, Exhibit 413.

19 STAFF COUNSEL WILLIS: Can you describe it,  
20 please?

21 MR. SARVEY: It says risk management annual  
22 report, 2000.

23 STAFF COUNSEL WILLIS: Just for the record, part  
24 of our exhibit is cut off. Mr. Celli, just for the  
25 record, the copy of our exhibit is cut off on the side and

1 up the bottom on the right side.

2 MR. WHEATLAND: As is ours.

3 HEARING OFFICER CELLI: This is 413?

4 STAFF COUNSEL WILLIS: Yes.

5 HEARING OFFICER CELLI: Page 300?

6 STAFF COUNSEL WILLIS: It didn't -- ours didn't  
7 have a page number and it was cut off on two sides.

8 HEARING OFFICER CELLI: This is PSD increment  
9 consumption status report?

10 MR. SARVEY: No, sir. It's Exhibit 413, which is  
11 CPUC proceeding PG&E data response pages 296, 297, 300.

12 HEARING OFFICER CELLI: Is there a question  
13 pending?

14 MR. SARVEY: No. I was just directing him to  
15 that page so I could ask questions.

16 MR. TYLER: Is there some part of the page I'm  
17 supposed to --

18 MR. SARVEY: Yes. Look under L 002 smart  
19 pigging. That would be the fifth paragraph.

20 HEARING OFFICER CELLI: He's reviewing the  
21 testimony.

22 MR. SARVEY: Earlier you said that you had no  
23 concern about the oil pipeline and the pipeline easement.  
24 Just reading that first sentence change your opinion at  
25 all?

1           MR. TYLER: I said that I had no concern with  
2 regard to the area of the interconnection. And I still  
3 say that even if there was -- it's 3,000 feet to the  
4 nearest residents.

5           MR. SARVEY: And you also said even if there was  
6 a catastrophic failure, you thought there would be no  
7 issue at all.

8           MR. TYLER: The area is used for grazing of  
9 cattle. The nearest residents is 3,000 feet away. There's  
10 not a conceivable incident that I'm aware of that I can  
11 think of in all of the incidents that I've looked at that  
12 would suggest impacts at that distance from a failure near  
13 the point of interconnection.

14          MR. SARVEY: Have you ever seen an oil pipeline  
15 rupture?

16          MR. WHEATLAND: Objection. Relevance. This is  
17 not an oil pipeline.

18          HEARING OFFICER CELLI: Sustained.

19          MR. SARVEY: Yes it is. There is an oil pipeline  
20 in the easement.

21          HEARING OFFICER CELLI: It's sustained.

22          MR. SARVEY: You're not going to provide me with  
23 a PG&E witness. You're not going to question Mr. Tyler.  
24 What's the purpose, Mr. Celli.

25          HEARING OFFICER CELLI: Mr. Tyler, whether he's

1 seen a ruptured oil pipe --

2 MR. SARVEY: Uh-huh.

3 HEARING OFFICER CELLI: And the relevance is?

4 MR. SARVEY: And the relevance is he just said  
5 there was no possible consequence of having a failure. If  
6 that pipeline explodes, its's going to trigger the  
7 explosion of that oil pipeline. The oil pipeline runs.  
8 It doesn't -- it's not like an actual gas pipeline that  
9 goes straight up in the air. It runs. It catches fire.  
10 It's a ripper of fire. Not only does it have severe  
11 consequences for human health, has severe environmental  
12 consequences. And that's the point.

13 HEARING OFFICER CELLI: Okay. Have you ever seen  
14 one, Mr. Tyler?

15 MR. TYLER: No.

16 HEARING OFFICER CELLI: Thank you. Okay. Let's  
17 see if we can get it down to one more question here. Mr.  
18 Sarvey, you've been going for quite a long time here.

19 MR. SARVEY: Are you aware that there's been cap  
20 loaded protection interfere engines an line 002?

21 MR. TYLER: That's on the information you just  
22 pointed out to me. There appears to have been some  
23 question about the cathodic protection in 2000, 2001 era.  
24 We're now in 2011. I would assume there's been numerous  
25 additional piggings of that line between then and now.

1 And it also states that the pigging results didn't require  
2 PG&E -- that any problems were not sufficient to require a  
3 reduction in the MAOP. So based on that, I'm not seeing a  
4 smoking gun, if you will.

5 MR. SARVEY: Okay. No more questions. I don't  
6 get to ask any more questions?

7 HEARING OFFICER CELLI: Thank you, Mr. Sarvey.

8 MR. SARVEY: I would like to ask more questions.

9 HEARING OFFICER CELLI: Oh, I thought I just said  
10 no more questions.

11 MR. SARVEY: I'm asking you can I ask a couple  
12 more questions.

13 HEARING OFFICER CELLI: How many questions do you  
14 have and don't tell me you have a few?

15 MR. SARVEY: Well, every time he responds,  
16 there's evidence here I'd like to question him here that's  
17 in exhibit 413.

18 HEARING OFFICER CELLI: 413 is an article.

19 MR. SARVEY: 413 is --

20 HEARING OFFICER CELLI: All right. So how many  
21 questions do you have?

22 MR. SARVEY: I'll say two more.

23 HEARING OFFICER CELLI: We'll give you two more  
24 questions and then we're on to the next.

25 MR. SARVEY: Okay. PG&E page 296, Mr. Tyler,

1 second paragraph, where it says second sentence says  
2 pitting 1.95 inches deep represents a 61 percent maximum  
3 loss and therefore confirming a level of conservatives is  
4 reported from the pig. Does a 61 percent maximal wall  
5 loss sounds like the pipeline might have some issues with  
6 core reservations?

7 STAFF COUNSEL WILLIS: I'm going to object. Is  
8 Mr. Sarvey asking this witness about the pipeline as it  
9 was in 2001? Or the pipeline as it is now, ten years  
10 later.

11 MR. SARVEY: I would assume it's a lot worse.  
12 It's been in the ground ten more years. I'm not bringing  
13 that testimony. I don't have that with me.

14 STAFF COUNSEL WILLIS: That's an assumptions that  
15 I would object to that it's not in the record.

16 MR. SARVEY: I didn't make that assumption.

17 STAFF COUNSEL WILLIS: If this witness -- the  
18 e-mail, the status of this is -- this witness isn't here  
19 testify to a PG&E pipeline back in 2001. I'm just  
20 objecting to the relevance and to the --

21 HEARING OFFICER CELLI: Let's do this. I don't  
22 know what the question is, because right now Mr. Tyler is  
23 reading some data. There's no question pending.

24 MR. WHEATLAND: Yes, there is.

25 STAFF COUNSEL WILLIS: He just asked a question.

1           MR. TYLER: He asked me about the 61 percent  
2 loss. And I would point to the fact that in the last  
3 couple of --

4           STAFF COUNSEL WILLIS: Mr. Tyler, I had an  
5 objection if you could --

6           MR. TYLER: Oh, okay.

7           STAFF COUNSEL WILLIS: My objection is this  
8 information is about a 2001 status of a pipeline in 2001.  
9 And Mr. Tyler is not here to testify to pipeline back in  
10 2001 that's a PG&E pipeline. He was here to testify to  
11 the hazardous --

12          HEARING OFFICER CELLI: Okay. But is the  
13 question something to the effect of is a 61 or 62 percent  
14 corrosion of the wall of the pipe -- what was the  
15 estimate?

16          MR. SARVEY: It was 61 percent maximum wall loss  
17 on the pipe.

18          HEARING OFFICER CELLI: What was the question to  
19 Mr. Tyler? Does that --

20          MR. SARVEY: I asked him if a 61 percent wall  
21 loss on the pipe would indicate to him that the proper  
22 pipeline had corrosion problems.

23          HEARING OFFICER CELLI: I think that as something  
24 that is irrelevant respective of time. He can answer if  
25 he knows.



1           STAFF COUNSEL WILLIS: I'm just going to clarify  
2 that, a pipeline in general?

3           HEARING OFFICER CELLI: A general, a 61 or 62  
4 percent of a wall loss --

5           MR. SARVEY: This is 2002 we're talking about.

6           STAFF COUNSEL WILLIS: But we don't have any  
7 specific testimony today for how --

8           HEARING OFFICER CELLI: You're asking an expert a  
9 hypothetical question.

10          STAFF COUNSEL WILLIS: It has not been presented  
11 as a hypothetical.

12          HEARING OFFICER CELLI: I think as asked, it's  
13 hypothetical. Let's go with that.

14          MR. TYLER: It could be in certain circumstance.  
15 In fact, if you read the rest of the paragraph, it states  
16 that it's not a problem here. And it further goes right  
17 to the point I made in my testimony, which is in this  
18 location and the careful mapping of the pipeline suggested  
19 that this is not a problem.

20          HEARING OFFICER CELLI: There's your answer.  
21 That's your last question, Mr. Sarvey.

22          MR. SARVEY: Were you aware when they discovered  
23 this they lowered the pipeline pressure to repair this  
24 pipeline?

25          MR. TYLER: To repair it?

1           MR. SARVEY: Yes they repaired this pipeline when  
2 they discovered the small loss. They lowered the pipeline  
3 pressure as well. Were you aware of that?

4           MR. TYLER: Did they lower the pipeline  
5 pressure --

6           MR. SARVEY: Were you aware they did lower the  
7 pipeline --

8           MR. TYLER: Yeah. Yeah. No, I'm not aware of  
9 it.

10          MR. SARVEY: That's all I have.

11          HEARING OFFICER CELLI: Thank you. My questions  
12 from Mountain House Community Service District?

13          MR. GROOVER: I have one really fast.

14          Sir, you testified to two different things that  
15 the pipeline was built in 1972 or 70 ands you testified it  
16 was (inaudible) under current federal standards. And  
17 there is a 40-year separation between currency and 1972.  
18 Can you explain that to me?

19          MR. TYLER: Basically, the codes haven't -- the  
20 codes have not changed in a fundamental way in that amount  
21 of time. Basically, the federal regulations went into  
22 effect and this line was according to those newer  
23 regulation.

24          Before that, the regulations were much, much  
25 different. If you look at the regulatory history of the

1 regulations, there were huge differences between pipelines  
2 built in the 1970s and pipelines built at much earlier  
3 times.

4           There have been changes. One of the changes is  
5 that there is now an integrity management program that  
6 applies to this section of the pipeline, applies to the  
7 PG&E system in general. Those are improvements.

8           But what I'm saying is my knowledge of the code  
9 as it existed in 1970 suggests to me that this is a modern  
10 pipeline design. It represents more or less  
11 state-of-the-art design.

12           HEARING OFFICER CELLI: Thank you.

13           Mr. Dighe.

14           MR. WHEATLAND: Hearing Officer Celli, for the  
15 record, I'm going to object to my questions by Mr. Dighe  
16 or Mr. Singh or Mr. Simpson. Under the rules the  
17 Committee set out, you required the parties the identify  
18 with specificity the areas that were in contention and the  
19 estimates of cross. Mr. Dighe and Mr. Singh merely  
20 photocopied Mr. Sarvey's prehearing conference statement  
21 but did not themselves file any independent analysis or  
22 questions. Mr. Simpson provided no estimate of cross for  
23 this witness and did not identify this as a topic in  
24 dispute.

25           HEARING OFFICER CELLI: Hazardous materials was

1 Sarvey only.

2 MR. SIMPSON: Mr. Celli, we've been encouraged by  
3 the public adviser to work together. So we submit  
4 somewhat similar prehearing conference statements in that  
5 spirit that we're working together. We're trying to  
6 consolidate our issues. We raise the same issues. But  
7 now we're being penalized for working together.

8 STAFF COUNSEL WILLIS: With all due respect,  
9 they're not working together now. Everybody is asking  
10 separate questions. And we did calculate time and based  
11 on the prehearing conference statement. I believe it's  
12 unfair that our witnesses have been subject to  
13 cross-examination by every single party despite the fact  
14 that most of the parties did not raise these issues. Only  
15 one party did, Mr. Sarvey.

16 HEARING OFFICER CELLI: That's correct.

17 MR. GROOVER: Mr. Celli, I did reserve the right  
18 to cross-examine testimony given and I have never gone  
19 against that.

20 STAFF COUNSEL WILLIS: Likewise, I'm not talking  
21 about that.

22 MR. GROOVER: Thank you.

23 HEARING OFFICER CELLI: Objection sustained.

24 MR. DIGHE: I did raise issues in the workshop  
25 after the hearing. I mean, I had a lot of questions and

1 then now the PG&E person is not there. And I had a lot of  
2 relevant questions during the workshop and different notes  
3 when Craig was there.

4 HEARING OFFICER CELLI: Actually, when my record  
5 shows the only person who sought to introduce evidence on  
6 hazardous materials was Mr. Sarvey.

7 MR. DIGHE: But my data request one year back I  
8 had questions around pipeline --

9 HEARING OFFICER CELLI: I'm working off of the  
10 prehearing conference statement.

11 MR. DIGHE: In my exhibits I have questions  
12 around pipeline explosion. It is there. It was submitted  
13 as --

14 HEARING OFFICER CELLI: I had instructed the  
15 parties to work together and they were going to designate  
16 a lead intervenor. In this case, air quality was supposed  
17 to be Mr. Sarvey. Hazardous materials was supposed to be  
18 Mr. Sarvey. Aviation was supposed to be Mr. Wilson.  
19 So --

20 MR. SIMPSON: Mr. Celli, I don't know how we  
21 would have been expected to bring this information before  
22 the workshop. The workshop occurred after the prehearing  
23 conference.

24 HEARING OFFICER CELLI: Well, I'll tell you what.  
25 We have -- we asked the parties to declare essentially

1 what their evidence was going to be in their prehearing  
2 conference statements and the parties told us what they  
3 were and if there were some sort of showing of good cause  
4 we would consider the need for additional evidence. So,  
5 for instance, Mr. Sarvey put some things some of it has  
6 come in. Some hasn't. But there needs to be a showing of  
7 good cause. In this case, I'm not sure I'm hearing a good  
8 cause.

9 MR. DIGHE: I filed --

10 HEARING OFFICER CELLI: How many questions do you  
11 have?

12 MR. DIGHE: I have eight. But I can -- I'll try  
13 my best to combine them as I start hearing answers.

14 HEARING OFFICER CELLI: No. Actually, I'm  
15 concerned if we allow questioning when we got prehearing  
16 conference statements from people that said these were our  
17 issues, we did not get any -- I have your prehearing  
18 conference statement here --

19 MR. DIGHE: If you go in my exhibit --

20 HEARING OFFICER CELLI: If you were asking me to  
21 draw inferences from your exhibits as to what you may have  
22 been thinking, that's not going to work. I need to know  
23 what people wanted to put in their prehearing conference  
24 statements. I am not going to sit here and try to guess  
25 what your thoughts were. If you didn't express your

1 intentions --

2 MR. DIGHE: My intention during the workshop were  
3 clearly --

4 HEARING OFFICER CELLI: I'm not interested in the  
5 workshop. I am not a party to the workshop. You'll  
6 notice nobody was at the workshop with the Committee. The  
7 Committee does not go to the workshop. So for purposes of  
8 the evidentiary hearing, we have the topic areas that  
9 remain disputed and require (inaudible) are according to  
10 Mr. Dighe socioeconomics, air quality, public health, land  
11 use, alternatives, and then -- wait a minute. Uh-huh.  
12 Time out. He did mention hazardous materials. Why didn't  
13 that show up?

14 MR. WHEATLAND: I think it is because he just  
15 simply copied what Mr. Sarvey wrote verbatim.

16 MR. SINGH: But he the material --

17 HEARING OFFICER CELLI: Stop talking, everyone,  
18 right now. One person talks at a time. You don't talk  
19 over each other. I'm dealing right now with Mr. Dighe.  
20 I'll just have to wait until I'm finished. We can't have  
21 a record with everybody talking at the same time. So just  
22 sit on it for a minute and don't talk. We're going to go  
23 off the record for a moment.

24 (Off record.)

25 HEARING OFFICER CELLI: Mr. Dighe, how many

1 questions do you have, can you get it down to?

2 MR. DIGHE: I'm going to try may be four.

3 HEARING OFFICER CELLI: Let's see what you can do  
4 and let's make this quick, please.

5 MR. DIGHE: Thank you.

6 HEARING OFFICER CELLI: And I apologize. You did  
7 mention in your prehearing conference statement. The mere  
8 fact somebody zeros's somebody else's prehearing  
9 conference statement, the fact that he submitted it,  
10 (inaudible) noticed that he had the issue. So we're going  
11 to allow you because you put us on notice that you had  
12 hazardous materials questions to ask this witness  
13 question.

14 MR. DIGHE: This is the first time so we took as  
15 a sample.

16 HEARING OFFICER CELLI: Please, go forward.

17 MR. DIGHE: So do you consider testing of the  
18 pipeline and understanding the current conditions  
19 important for doing a risk assessment according to your  
20 professional experience?

21 MR. TYLER: It is one of the factors that's  
22 important. But any time you do a risk assessment, you're  
23 a praising both the probability of a failure and the  
24 potential consequences. And a large part of my conclusion  
25 goes to the issue of potential consequences. This



1 pipeline, the interconnection to the PG&E pipeline is in a  
2 very remote area. Nearest residence is 3,000 feet away  
3 from the nearest interconnection. So even a catastrophic  
4 loss of containment would not result in impacts in my  
5 opinion.

6 MR. DIGHE: So you're assuming that the  
7 neighboring -- the neighbor -- the area around the  
8 potential significant impact is not going to have  
9 residential development; correct?

10 MR. TYLER: There is no residential development  
11 at this time. And I saw no evidence of planned  
12 development. And CEQA doesn't require me to specialize on  
13 that.

14 MR. DIGHE: If there were, according to that will  
15 that trigger your more detail risk assessment?

16 MR. TYLER: There are in general -- in general,  
17 there is a large debate going on right now in or  
18 proceedings about the efficacy of allowing development  
19 near pipelines. It's well beyond my ability to address  
20 that subject. I can say that it could, if it did happen,  
21 require that the pipeline be upgraded, depending on how  
22 close the development would be. There's certainly much  
23 more scrutiny today than there was in the past. But in  
24 general, if there was development and encroachment to the  
25 pipeline, that would change the whole completion of an

1 analysis of a risk.

2 MR. DIGHE: According to your professional  
3 experience, do you know about standard testing procedures  
4 which would clearly indicate the cycling causing changing  
5 pressures and blowing the pipeline? Are there any fixed  
6 (inaudible) testing procedures which can clearly prove  
7 that and -- first question.

8 MR. TYLER: As a result of the Committee's  
9 directive to staff, I did look at the efficacy or the  
10 issue of pressure cycling. And my evaluation of the  
11 regulatory program in that context indicated that standard  
12 pipelines or the pipelines that -- pipe that is  
13 manufactured for pipelines is required to be tested for  
14 both toughness and duct tilt tee. The whole intent of  
15 that requirement is that the pipeline would not  
16 catastrophically fail.

17 That any failure in the pipeline would be  
18 localized and the assertion of the experts in developing  
19 that code are that the pipeline could be designed based on  
20 yield stress analysis only in light of the pipeline having  
21 to be tested with a sharp V-notch test and a drop test.  
22 I am familiar with those types of testing. I did have  
23 laboratories in college where we did yield tests, where we  
24 did sharp V-notch tests. And I understand the  
25 implications of requiring those sort of tests at the

1 manufacture of the pipe.

2           So my take is that the existing regulatory  
3 program addresses explicitly the issue of pressure cycling  
4 and addresses it in a way that renders the necessity of  
5 evaluating it mute.

6           MR. DIGHE: Last question. Are you aware when  
7 the last testing of line 002 was conducted? The thorough  
8 testing of line 002 was conducted?

9           MR. TYLER: What kind of testing?

10          MR. DIGHE: The thorough testing as per the  
11 regulations of the categorized.

12          MR. TYLER: I'm not hearing that word.

13          MR. DIGHE: When was the -- let me rephrase it.  
14 When was the last thorough testing.

15          HEARING OFFICER CELLI: Thorough testing.

16          MR. TYLER: My understanding of the program is  
17 that there's an integrity management program that requires  
18 regular pigging. I've seen information here that suggests  
19 that there is regular testing of pressure relief valves on  
20 a yearly basis. There was a proof test done of the line  
21 when it was put in service. In other words, it was  
22 hydrostatically tested. That indicates to me that the  
23 line is designed well and should be maintained well. The  
24 existing regulatory program -- I have no reason to  
25 question its valid tee or its effectiveness.

1           MR. DIGHE: Last question. I'm sure. When  
2 you --

3           MR. WHEATLAND: That was the last question.

4           HEARING OFFICER CELLI: Last question, Mr. Dighe.  
5 Overruled.

6           MR. DIGHE: Did you discuss with PG&E and ask  
7 them the current maintenance record and the current  
8 conditions of the pipeline? Did you ever come in your  
9 discussion? Did you discuss it?

10          MR. TYLER: PG&E has not discussed with staff  
11 anything that was not available to all the parties in the  
12 workshop. We have asked for information and we have  
13 gotten essentially the same response that you heard here  
14 tonight. And that's where it's at.

15          MR. DIGHE: Thank you.

16          HEARING OFFICER CELLI: Thank you, Mr. Dighe.

17          Mr. Singh, do you have any questions of this  
18 witness? I don't want these moved around too much or we  
19 mess with their operability.

20          MR. SINGH: Since your expert question you know  
21 when we go to the school and study some principles, what  
22 pipeline is round and not square?

23          MR. TYLER: Well, for several reasons. One is a  
24 round pipeline conserves material. It makes it cheaper.  
25 A square corner would induce higher stresses in the metal.

1 So there's many reasons. But almost all pressure vessels  
2 or pressure piping are round because that's the most  
3 efficient way to make them.

4 MR. SINGH: You mentioned this pipeline is safe  
5 multiple times. So how pipeline was safe of San Bruno in  
6 how much it was safe and it blew up.

7 STAFF COUNSEL WILLIS: Objection. Relevance.

8 HEARING OFFICER CELLI: Sustained. Irrelevant.

9 MR. SINGH: What percentage of San Bruno even  
10 happens? One in 1,000? One in 1500?

11 MR. WHEATLAND: Objection. Relevance.

12 HEARING OFFICER CELLI: Sustained.

13 MR. SINGH: When we talk about the safety, you  
14 know, we need to draw the analogy which recently even  
15 happened in San Bruno.

16 STAFF COUNSEL WILLIS: We'd object to that.  
17 They're two different situations.

18 HEARING OFFICER CELLI: What's the question?  
19 What are you trying to get to, Mr. Singh?

20 MR. SINGH: So I'm trying to drive what is a  
21 percentage of events that happen like in San Bruno and  
22 what is the area that was impacted. I want to couple that  
23 area that there is 3,000 feet or yard there is no impact  
24 due to this pipeline, I want to draw an analogy what was  
25 the radius of area that was blew up in San Bruno.

1 HEARING OFFICER CELLI: So I want to ask this  
2 witness if he knows what was the radius of the damage in  
3 San Bruno?

4 MR. SINGH: Right.

5 HEARING OFFICER CELLI: Do you know that answer?

6 MR. TYLER: I do not.

7 HEARING OFFICER CELLI: Okay. Next question.

8 MR. SINGH: Are you from California, sir?

9 MR. TYLER: Yes.

10 MR. SINGH: And you're an expert and you do not  
11 know how much San Bruno area was impacted?

12 STAFF COUNSEL WILLIS: Objection.

13 HEARING OFFICER CELLI: Sustained. I'm from  
14 California and I don't know. I don't think being from  
15 California --

16 MR. SINGH: But that impact happened for than  
17 3,000 people, sir.

18 HEARING OFFICER CELLI: I don't know that.  
19 That's not in the record. That's irrelevant to what we're  
20 doing here. If you can ask the next question, please.

21 MR. SINGH: Is there any record or code they fell  
22 like the degradation of pipeline happens over period of  
23 time and what type of degradation they measure?

24 MR. TYLER: Can you repeat the question? I don't  
25 think I'm following what you're --

1           MR. SINGH: In the gas pipeline there is a  
2 process of degradation. What are those different types of  
3 degradation that happens in the pipeline?

4           MR. TYLER: There's different types of  
5 degradation that occurs in pipelines. A common one is  
6 corrosion. Another one is third party damage due to  
7 backhoe operators in various -- there's subsidence.  
8 There's earthquakes. There's a lot of factors that could  
9 cause degradation of the integrity of a pipeline.

10          MR. SINGH: So the (inaudible) have you seen  
11 the --

12          MR. TYLER: Actually, the most common is  
13 third-party damage. But corrosion is relatively high on  
14 the list.

15          MR. SINGH: Have you seen the corrosion record of  
16 degradation in this pipeline? Or have you asked PG&E to  
17 provide you and you can look into it?

18          MR. TYLER: We have asked PG&E some questions.  
19 What I would say is I still believe that the existing  
20 regulatory program including the extensive integrity  
21 management program --

22          STAFF COUNSEL WILLIS: I just want to instruct my  
23 witness just to answer the question as asked.

24          MR. TYLER: I'm not aware of the specific  
25 corrosion in 1002.

1           MR. SINGH: So basically there is no analysis  
2 being done by you on the corrosion of this pipeline, which  
3 is a very common factor.

4           MR. WHEATLAND: Objection argumentative and asked  
5 and answered.

6           HEARING OFFICER CELLI: You can answer that  
7 question. You can answer that question on whether you've  
8 done any analysis on line 002. You either have or you  
9 haven't.

10          MR. TYLER: I haven't done specific analysis  
11 on-line 002. I looked at the adequacy of the regulatory  
12 program, which I relied upon. And I believe it is  
13 adequate.

14          HEARING OFFICER CELLI: Okay. Go ahead, Mr.  
15 Singh.

16          MR. SINGH: For 200 megawatt twin -- what do you  
17 call turbine, how much gas it suction per minute and how  
18 much that bends a pressure variation or pressure cycle in  
19 the pipeline?

20          MR. TYLER: The turbine at this facility actually  
21 is federal by a compressor that hooks to an eight inch  
22 diameter line. That compressor, when it operates, would  
23 generally move to reduce the pressure in line 002 because  
24 it would be drawing off the line. Assuming the pressures  
25 are relatively equal at the point of interconnection to



1 the pipeline, the 002 is a 26-inch pipeline. The pipeline  
2 to the project is an eight-inch diameter pipeline. So I  
3 would expect that that operation of a facility would have  
4 nominal effect on our a very small effect on pressures in  
5 line 002.

6 MR. SINGH: Is there a hypothesis or a concrete  
7 number which are within the tolerance factor of some code  
8 enforced by PG&E?

9 MR. TYLER: The code requires that the pipeline  
10 not be operated outside of its MAOP, maximum allowable  
11 operating pressure. I have no evidence to suggest that  
12 that's going to happen as a result of this project. Nor  
13 do I believe it will happen as a result of this project.  
14 I do not believe that changes in pressure below the MAOP  
15 are significant in light of the codes and how they deal  
16 with the issue of fatigue in a pipeline. That's my expert  
17 opinion.

18 MR. SINGH: Do you know how many times in a day  
19 this power plant will be turned on and off?

20 MR. TYLER: That would vary over time, and I  
21 really don't know.

22 MR. SINGH: So that means the pressure cycling  
23 analysis not being done and that comes basically directly  
24 number of times a power plant is operational and  
25 non-operational.

1 MR. WHEATLAND: Objection. Asked and answered  
2 and argumentative.

3 HEARING OFFICER CELLI: Sustained.

4 Next question.

5 MR. SINGH: Do you have to sustain or he can  
6 sustain us?

7 HEARING OFFICER CELLI: I sustained you. The  
8 objection is sustained. I need you to ask your next  
9 question, please.

10 MR. SINGH: So basically when you say this  
11 pipeline is safe, it is based on the PG&E saying but there  
12 is no particular in hand objective analysis with numbers  
13 anything being done?

14 STAFF COUNSEL WILLIS: Objection. Argumentative.

15 HEARING OFFICER CELLI: I think that's a fair  
16 question that Mr. Tyler can answer.

17 MR. TYLER: What I'll go back to again is the  
18 fact that I looked at the risk of this pipeline. There is  
19 no such thing as an absolutely safe anything. The fact is  
20 that the risks are acceptable. The pipeline is located in  
21 an area where even catastrophic failure would not produce  
22 large consequences. It is not in a high impact area. It  
23 is not in a heavily populated area. So my analysis is  
24 very objective and is relying on the facts as I see them.  
25 In my expert opinion. And I don't believe based on that

1 that there is a problem here in terms of safety.

2 MR. SINGH: So what is the safety tolerance that  
3 you had looked into the numbers?

4 MR. TYLER: I don't understand your --

5 MR. SINGH: In the previous statement, you said  
6 you looked into the safety limits, so what are those  
7 safety limits that you looked into objectively? Not  
8 subjective ly? Objectively those numbers you saw,  
9 (inaudible) with tolerance, those numbers being provided  
10 by PG&E and said okay we are fine with this and this  
11 pipeline is safe.

12 MR. TYLER: What I looked at in terms of design  
13 for this project was the line between the power plant and  
14 the PG&E line. Normally, that's where we end our  
15 assessment. I found no reason to suggest that the  
16 pressures associated with operating that line would exceed  
17 the requirements of code. And therefore, by the best of  
18 my knowledge will be operated below its MAOP. And  
19 therefore should not suffer failure. I don't find any  
20 reason to believe that open alteration of that pipeline  
21 will precipitate failure. Somehow in the PG&E pipeline.  
22 I don't find that plausible.

23 MR. SINGH: My last question. What other factors  
24 do you look objectively, not subjective ly in MAOP?

25 MR. TYLER: The MAOP is objectively required by

1 the code. It basically is a function of the pressure that  
2 exists inside of a pipe and the hoop stress. And I've  
3 seen nothing, not a single spread of evidence to suggest  
4 that this project will cause either the pipeline  
5 connecting the project to line 002 or 002 to operate  
6 outside its MAOP.

7 HEARING OFFICER CELLI: Thank you.

8 Thank you, Mr. Singh.

9 Mr. Simpson, any questions of this witness?

10 MR. SIMPSON: Yes. Pursuant to 1216 of the  
11 Warren-Alquist Act and 11430.10 of the Government Code, I  
12 need to object to the determination that the Commission  
13 breaking from this hearing to meet with PG&E's attorney is  
14 not ex parte communication. PG&E has a profit motive --

15 HEARING OFFICER CELLI: Is PG&E a party?

16 MR. SIMPSON: Section --

17 HEARING OFFICER CELLI: No. My question is is  
18 PG&E a party?

19 MR. SIMPSON: PG&E has been referenced 124 times.

20 HEARING OFFICER CELLI: That's not an answer to  
21 my question. Is PG&E a party? Yes or no, Mr. Simpson.

22 MR. SIMPSON: I believe PG&E is a party. And  
23 11430. 10 doesn't say whether they're a party or not. It  
24 said while the proceeding is pending, there shall be no  
25 communication direct or indirect regarding any issue in a

1 proceeding to the presiding officer from an employer or  
2 representative of an agency that's party or from an  
3 interested person outside the agency without notice and  
4 opportunity for all parties to participate in the  
5 communication. So you have communications from an  
6 interested person outside of the agency without notice for  
7 an opportunity for all parties to participate in the  
8 communication.

9 MR. WHEATLAND: Your Honor, could we take up the  
10 frivolous motions at the end of the hearing

11 HEARING OFFICER CELLI: Yes, we did.

12 MR. SIMPSON: We've been hearing your frivolous  
13 motions for --

14 HEARING OFFICER CELLI: Let me say this, Mr.  
15 Simpson. We'll take your motion under advisement. Do you  
16 have any questions of this witness?

17 MR. SIMPSON: Sure. I have a few.

18 HEARING OFFICER CELLI: Let's go.

19 MR. SIMPSON: Is there a percentage of pipeline  
20 corrosion that would be significant?

21 MR. TYLER: Pipeline corrosion is always  
22 significant. The question is: Is it sufficient to cause  
23 a downgrade of the pressure? Having corrosion in a line  
24 is similar to saying that the pipe is actually not as  
25 thick as it originally was. And therefore, the new

1 thickness dictates the safe operating pressure at that  
2 point in time.

3           So if you have corrosion and it is sufficient to  
4 reduce the cross section all area of the pipe, then the  
5 stress goes up in that section for the same pressure that  
6 existed before and therefore it erodes the margin of  
7 safety in the pipeline. That is why you do these sorts of  
8 analysis and that is why you have an integrity management  
9 program that requires you to adjust the operation of the  
10 pipeline to maintain its safety.

11           MR. SIMPSON: Let me try again. Maybe you can be  
12 more direct answer.

13           What percentage of pipeline corrosion would pose  
14 a significant hazard?

15           MR. TYLER: The amount of corrosion --

16           MR. SIMPSON: It's like a number between one and  
17 a hundred.

18           MR. TYLER: It isn't, that's the problem. It  
19 really isn't a number --

20           MR. WHEATLAND: Objection. Asked and answered.

21           HEARING OFFICER CELLI: Sustained.

22           MR. SIMPSON: Are you familiar with the  
23 investigations or proceedings that PG&E's attorney brought  
24 on to our record tonight?

25           MR. TYLER: I'm familiar with the fact that

1 they're going on at the CPUC. I actually observed the  
2 proceedings at the NTSB, the three days of proceedings at  
3 the -- two days of it and my staff also observed the first  
4 day and we've communicated about.

5 MR. SIMPSON: And has participation in that  
6 proceeding altered your view of pipeline safety or your  
7 determination in this proceeding?

8 MR. TYLER: No. Basically, the primary reason  
9 for my determination was the remoteness of the connection  
10 of the power plant to any public receptors. The most  
11 important aspect of my analysis was it's 3,000 feet from  
12 the interconnection to the nearest residence. That is a  
13 very large distance. And then even then, the number of  
14 people that could be affected is very, very small. You're  
15 talking about two residents within 3,000 feet. Normally,  
16 when you evaluate risk, you look at the number of  
17 potential outcomes as well.

18 MR. SIMPSON: So you're just talking about the  
19 interconnection. You're not talking about the pipeline?

20 MR. TYLER: I'm not. I'm talking about the  
21 location of the interconnection. And I think I said  
22 earlier I didn't find a plausible basis to assume it would  
23 cause precipitate failures at significant distances.

24 MR. SIMPSON: That's it.

25 HEARING OFFICER CELLI: Thank you, Mr. Simpson.

1 Any redirect?

2 STAFF COUNSEL WILLIS: None.

3 MR. WHEATLAND: I have no questions of this  
4 witness.

5 HEARING OFFICER CELLI: Thank you.

6 Thank you, Mr. Tyler. Thanks for staying late.

7 Appreciate it. That was hazardous materials. Did I  
8 receive all of your evidence on hazardous materials, Mr.

9 Sarvey? There was a motion --

10 MR. SARVEY: I would move that we enter into the  
11 record Exhibit 405, hazardous materials testimony of  
12 Robert Sarvey, and 413, CPUC proceeding PG&E data  
13 responses.

14 HEARING OFFICER CELLI: And objection -- we've  
15 already received 415 and 405. So the only new exhibit is  
16 413. Any objection to 413 applicant?

17 MR. WHEATLAND: It's not relevant, but we don't  
18 object.

19 HEARING OFFICER CELLI: Any objection? Mountain  
20 House?

21 MR. GROOVER: None.

22 HEARING OFFICER CELLI: Mr. Dighe?

23 MR. DIGHE: None.

24 HEARING OFFICER CELLI: Mr. Wilson?

25 MR. WILSON: None.



1 HEARING OFFICER CELLI: Mr. Singh?

2 MR. SINGH: None.

3 HEARING OFFICER CELLI: Mr. Simpson?

4 MR. SIMPSON: None. And if we continue tonight,  
5 I'll be participating by telephone.

6 HEARING OFFICER CELLI: That's fine.

7 Ms. Willis?

8 STAFF COUNSEL WILLIS: No.

9 HEARING OFFICER CELLI: On behalf of staff.  
10 413 will be received into evidence.  
11 (Whereupon the above-referenced document  
12 was received into evidence by the Hearing  
13 Officer.)

14 STAFF COUNSEL WILLIS: And Mr. Celli, we'll need  
15 to move in a new exhibit as well. The exhibit would be  
16 marked 303. It would be the proposed condition of  
17 certification or preventing gas flows. And that was --

18 HEARING OFFICER CELLI: What was the other  
19 condition that I got from you?

20 STAFF COUNSEL WILLIS: The visual. We marked  
21 that 304.

22 HEARING OFFICER CELLI: All right. Let me pull  
23 that for a second. Visual 6, so which we're at 3 --

24 STAFF COUNSEL WILLIS: We marked the Haz 8 as  
25 303. And the Vis 6 as 304.

1 HEARING OFFICER CELLI: Vis 6 is 304. Is there  
2 any objection, applicant?

3 MR. WHEATLAND: None.

4 HEARING OFFICER CELLI: Mr. Sarvey?

5 MR. SARVEY: No objection.

6 HEARING OFFICER CELLI: Any objection, Mountain  
7 House?

8 MR. GROOVER: None.

9 HEARING OFFICER CELLI: Mr. Dighe?

10 MR. DIGHE: None.

11 HEARING OFFICER CELLI: Mr. Wilson?

12 MR. WILSON: None.

13 HEARING OFFICER CELLI: Mr. Singh?

14 MR. SINGH: None.

15 HEARING OFFICER CELLI: Mr. Simpson?

16 MR. SIMPSON: None.

17 HEARING OFFICER CELLI: Okay. 304 and 303 are  
18 received into evidence.

19 (Whereupon the above-referenced document  
20 was received into evidence by the Hearing  
21 Officer.)

22 HEARING OFFICER CELLI: Then with that, we have  
23 just completed hazardous materials.

24 MR. WHEATLAND: We still have Mr. Simpson's  
25 testimony to receive.

1 HEARING OFFICER CELLI: Mr. Simpson.

2 MR. WHEATLAND: I'm sorry. Mr. Sarvey's  
3 testimony.

4 HEARING OFFICER CELLI: I've received everything  
5 from Mr. Simpson.

6 MR. WHEATLAND: Not Simpson. Sarvey. Is he  
7 going to be available for cross.

8 HEARING OFFICER CELLI: On hazardous materials?

9 MR. WHEATLAND: On hazardous materials.

10 HEARING OFFICER CELLI: I thought we already went  
11 through that. I am so sorry. One moment.

12 MR. WHEATLAND: I have three questions for him.

13 HEARING OFFICER CELLI: That's right. I'm sorry  
14 about that. So hazardous materials, Mr. Sarvey, you had  
15 exhibit 405, which has been received. I guess the parties  
16 want an opportunity to cross on 405. So with that,  
17 applicant.

18 MR. WHEATLAND: He's previously been sworn;  
19 correct?

20 HEARING OFFICER CELLI: Mr. Sarvey, have you been  
21 sworn?

22 MR. SARVEY: Yes, I have.

23 HEARING OFFICER CELLI: And apparently yes.

24 CROSS-EXAMINATION

25 MR. WHEATLAND: Mr. Sarvey, before I ask you

1 about your testimony, would you please state what academic  
2 training you have in gas pipeline construction and  
3 operation?

4 MR. SARVEY: I have no academic training in it.

5 MR. WHEATLAND: Do you have any professional  
6 experience in gas line -- pipeline construction and  
7 operation?

8 MR. SARVEY: Related to my participation in CPUC  
9 that I had referenced earlier, other than that, no. It's  
10 all related to line 002 and line 401.

11 MR. WHEATLAND: All right. I'd like to direct  
12 your attention to your rebuttal testimony, Exhibit 405.  
13 The first full paragraph at the bottom of that paragraph  
14 you state, "The pipeline has experienced two leaks from  
15 the Tracy area; one in 1997 and one in 1999." What is the  
16 basis of that statement?

17 MR. SARVEY: The information that I received from  
18 PG&E from the public -- from the discovery request.

19 MR. WHEATLAND: Any other source of that  
20 information?

21 MR. SARVEY: Not that I recall, sir.

22 MR. WHEATLAND: Your intervenor's Sarvey's brief  
23 on CEC jurisdiction on-line 002 on page five you have a  
24 chart California natural gas transmission line significant  
25 incident rates. I'll show you a copy of that chart. What

1 is the source of that chart?

2 MR. SARVEY: It's a report that was presented to  
3 our city council to convince them that this power plant  
4 was safe, but in actuality our city council turned it  
5 down.

6 MR. WHEATLAND: And that report was the Schulte  
7 Road Sports Complex report; is that correct?

8 MR. SARVEY: That is correct, sir.

9 MR. WHEATLAND: I'd like to distribute that  
10 document.

11 HEARING OFFICER CELLI: Have we seen this  
12 document yet?

13 MR. WHEATLAND: No. But Mr. Sarvey has.

14 HEARING OFFICER CELLI: What exhibit is this?

15 MR. WHEATLAND: This will be applicant's next in  
16 order, Exhibit 70.

17 HEARING OFFICER CELLI: No. I think we already  
18 have a 70. It wasn't received, but we had it marked for  
19 identification.

20 MR. WHEATLAND: So 71, please.

21 HEARING OFFICER CELLI: Let me just check that  
22 before you move on. 70 was a flight test report that was  
23 not received.

24 MR. WHEATLAND: 71, please.

25 HEARING OFFICER CELLI: 71 is the Shulte Road

1 Sports Complex pipeline safety assessment. So marked.

2 (Whereupon the above-referenced document  
3 was marked for identification by the  
4 Hearing Officer.)

5 MR. WHEATLAND: Now Mr. Sarvey, going back to the  
6 statement in your testimony, the pipeline has experienced  
7 two leaks in the Tracy area, one in 1997 and one in 1999.  
8 What was the cause of those two leaks?

9 MR. SARVEY: Gunshots, sir.

10 MR. WHEATLAND: And why is it you didn't mention  
11 that in your testimony here.

12 MR. SARVEY: Didn't see any reason to mention it.

13 MR. WHEATLAND: And you also did not mention that  
14 there is no record of a release from these pipes resulting  
15 in any loss of life, injury, or property damage, did you?

16 MR. SARVEY: As a matter of fact, there has been  
17 from the oil pipeline that's in the corridor with it. But  
18 no, I didn't mention if there was any loss of life or  
19 property damage.

20 MR. WHEATLAND: And you didn't mention there as  
21 been no damage or injuries reported as a result of any of  
22 these leaks, did you?

23 MR. SARVEY: No, I did not.

24 MR. WHEATLAND: That's all the questions I have.

25 HEARING OFFICER CELLI: Further cross?

1 MR. GROOVER: None.

2 HEARING OFFICER CELLI: Mountain House?

3 Mr. Dighe?

4 MR. DIGHE: None.

5 HEARING OFFICER CELLI: Mr. Wilson?

6 MR. WILSON: None.

7 HEARING OFFICER CELLI: Mr. Singh?

8 MR. SINGH: Cross to whom?

9 HEARING OFFICER CELLI: Actually, Mr. Sarvey, I

10 guess we can't have friendly cross here, unless you have

11 something -- you can establish that you have any adverse

12 testimony. And I don't think you're going to be able to

13 do this.

14 MR. SINGH: Well, I need to get some information.

15 You have to give me five minutes, you know.

16 HEARING OFFICER CELLI: No, I don't have to give

17 you five minutes. It's 8:46.

18 MR. SINGH: But it's not cross actually. It's --

19 HEARING OFFICER CELLI: Its wouldn't be cross.

20 You're right.

21 MR. SINGH: So there is some information we want

22 to come on the table which Sarvey has.

23 HEARING OFFICER CELLI: And I think that we've

24 probably got it all in. So --

25 MR. SINGH: The problem is you know if you go

1 around and they tie people under disclosures to do that.

2 HEARING OFFICER CELLI: Here's the question I  
3 have. If you have a question for Mr. Sarvey, tell me what  
4 your question is. A determination whether it's --

5 MR. SINGH: Mr. Sarvey --

6 HEARING OFFICER CELLI: You need to ask me the  
7 question and we're going to make a determination.

8 MR. SINGH: Mr. Sarvey has signed a non adequacy  
9 closure with Mariposa power plant. We want to make that  
10 more information out of that. I want to ask that question  
11 he was compelled to sign a nondisclosure with the Mariposa  
12 power plant. And what's going on.

13 HEARING OFFICER CELLI: Oh, boy. Mr. Sarvey,  
14 we'll ask you do you have a nondisclosure agreement signed  
15 between you and Mariposa Energy Project?

16 MR. SARVEY: Yes. As a matter of fact, I do. As  
17 a participant in the PUC proceeding, in order to review  
18 the confidential information related to the Mariposa CPA,  
19 I had to sign a nondisclosure agreement. And in order to  
20 do any analysis, I had to re say that information. So  
21 that was the purpose of the nondisclosure agreement.

22 MR. WHEATLAND: But for the record, that  
23 nondisclosure agreement was not between Mr. Sarvey and the  
24 Mariposa Energy Project.

25 MR. SARVEY: It was between myself and PG&E.



1 HEARING OFFICER CELLI: Okay. So --

2 MR. SINGH: And we like to have those facts come  
3 out. What will the facts he has -- he has embedded in  
4 him.

5 HEARING OFFICER CELLI: Well, I suppose he can if  
6 he wants to risk a lawsuit as signatories of the  
7 nondisclosure agreement.

8 MR. SINGH: But in these types of hearings,  
9 basically if somebody has undergone -- this is something  
10 like a lawsuit, right. Administrative hearings but we are  
11 doing cross-examination very much reputation of what the  
12 lawsuit is and we should be entitled to get information  
13 what he got. And CEC should review that information.

14 HEARING OFFICER CELLI: The State cannot ask for  
15 confidential information.

16 MR. SINGH: So maybe I can ask some questions he  
17 can give me those answers. Whether it is confidential  
18 shall or not confidential.

19 HEARING OFFICER CELLI: What is it you need to  
20 know from Mr. Sarvey?

21 MR. SINGH: So I want to find out the financials  
22 of MEP, how much does it cost to built? What are the --

23 HEARING OFFICER CELLI: I won't allow that  
24 question because he's not the person to ask.

25 MR. SARVEY: Actually, I do have the information

1 but I'm not willing to provide it.

2 HEARING OFFICER CELLI: How is it that you have  
3 the financials for the MEP?

4 MR. SARVEY: I have all their projection of their  
5 financials, their profit and loss and their capital  
6 outlays, but I'm not allowed to provide that information.

7 HEARING OFFICER CELLI: If you're not allowed --

8 MR. SARVEY: I'm not allowed to provide it due to  
9 my nondisclosure agreement with PG&E.

10 HEARING OFFICER CELLI: Okay. Go ahead, Mr.  
11 Galati, you want to say something?

12 MR. GALATI: Scott Galati behalf of PG&E.

13 As you know, when we consider a lot of proposers,  
14 there is a procurement review group and there is also  
15 people that are invited to participate. Mr. Sarvey  
16 participated in that for the long term RFO process with  
17 this project and many other projects. The reason that  
18 information is confidential is so that people cannot game  
19 the system by raising the price. So it is price  
20 confidential and people who participate in reviewing that  
21 and advising PG&E actually sign nondisclosure agreement to  
22 keep that price information confidential.

23 HEARING OFFICER CELLI: Do you have any questions  
24 that have -- that are not about the financials, that are  
25 adverse for Mr. Sarvey?

1           MR. SINGH: That is how it will come when I start  
2 asking the questions. So laws and procedures and  
3 confidentiality --

4           HEARING OFFICER CELLI: Was that a no or yes you  
5 have any further question of Bob Sarvey?

6           MR. SINGH: Yes. Can I continue on those  
7 questions?

8           HEARING OFFICER CELLI: No, you may not continue  
9 on the questions having to do with the confidential  
10 information.

11          MR. SINGH: Well, I do not know those are under  
12 confidentiality or not. So I should be given the liberty  
13 to ask the question --

14          HEARING OFFICER CELLI: You cannot continue  
15 regarding financials. That's the ruling from the  
16 Committee. So do you have any other area that you wish to  
17 ask --

18          MR. SINGH: So I cannot ask the question on rate  
19 pair.

20          HEARING OFFICER CELLI: It's irrelevant. So I  
21 just want to know if you had any other questions of Mr.  
22 Sarvey that are adverse.

23          MR. SINGH: Mr. Celli, this is our last chance.  
24 We need to open all the cards on the table and see how it  
25 is going to impact the community and especially racial

1 minority, you know. Everything will be interlinked.

2 HEARING OFFICER CELLI: We do not look at  
3 financials. We don't look at rate payer issues. It's not  
4 relevant to the Energy Commission.

5 Is there any further question before I move on  
6 that you could establish as adverse to Mr. Sarvey?

7 MR. SINGH: See, I wish I had been lawyer so I  
8 could have inserted some of the section of the law to open  
9 up this or untangled this not of nondisclosure, right.  
10 But because of the limitation of our knowledge on the law,  
11 like you know we pay our taxes to defend ourselves to CEC  
12 billions of dollars, right, sir? And here we are that we  
13 will be (inaudible) at the end of the with the rate  
14 payers.

15 HEARING OFFICER CELLI: Listen, I'm right there  
16 with you. I wish you had a lawyer. I mean, we all -- you  
17 know, I wish everybody could afford a lawyer. But you  
18 know, we have what we have. We have a public advise are.  
19 You can talk to her about any of these types of questions.  
20 But I really need -- the purpose of these hearings is to  
21 take in evidence so we know what as in the record so we  
22 can write a PMPD based upon the evidence. And that's the  
23 whole purpose of this thing.

24 And there are rules in place to keep it fair and  
25 one of the decisions that was made by this Committee is

1 that there would be no friendly cross. And I just am hard  
2 pressed to imagine any question you might for Mr. Sarvey  
3 that wouldn't be friendly cross. But we thought in  
4 fairness we would ask you to see if you had any and I  
5 haven't heard any yet. And we did ask -- we did a law one  
6 question and we did allow that into the record. But other  
7 than that, do you have any further questions of Mr. Sarvey  
8 so we can move on to staff?

9 MR. SINGH: I think the process is very not fair  
10 actually. If you look into the system

11 STAFF COUNSEL WILLIS: Mr. Celli, I'm going to  
12 object to the continuing discussion. We need to move on.

13 HEARING OFFICER CELLI: Just please, do you have  
14 a question or not for Mr. Sarvey?

15 MR. SINGH: We have plenty of questions to  
16 disclose that information what he is hiding in his heart,  
17 you know.

18 HEARING OFFICER CELLI: We have to ask Mr.  
19 Sarvey, what's you hiding in your heart?

20 I think we've taken this as far as we can with  
21 Mr. Sarvey.

22 MR. SARVEY: Do I get to redirect myself here on  
23 this additional exhibit that was just provided?

24 HEARING OFFICER CELLI: I've got to get to staff  
25 next. Go ahead.

1           STAFF COUNSEL WILLIS: I don't have any  
2 cross-examination. Thank you.

3           HEARING OFFICER CELLI: Okay. Now Mr. Sarvey,  
4 what's your request?

5           MR. SARVEY: I would like to redirect myself in  
6 my testimony to address this particular additional piece  
7 of evidence that Mr. Wheatland has introduced.

8           HEARING OFFICER CELLI: You're under oath. This  
9 is about to be your testimony. So basically testify to  
10 what it is that you need to rebut.

11                           REDIRECT EXAMINATION

12           MR. SARVEY: Mr. Sarvey -- Mr. Wheatland has  
13 provided you with the Shulte Road Sports Complex pipeline  
14 safety assessment and he's asked you a couple of questions  
15 about it. Can you tell me what the leak occurrence rated  
16 is for L 002 that's contained on page 14 of this  
17 particular document?

18           Yes, Mr. Sarvey, it's 4.7 times ten to the minus  
19 four.

20           And how does that compare to the significance  
21 rate that is normally accepted by staff as a significant  
22 impact?

23           Staff usually accepts a rate of one in one  
24 million as a significant impact.

25           Mr. Sarvey, was there other experts present and

1 was there other assessments to this type of line safety  
2 that were presented at this particular meeting where this  
3 Tetra Tech report was issued?

4 Yes, there was, as a matter of fact.

5 And what was the conclusions of the city council  
6 once they had heard both sides of the story?

7 The city council decided they did not want to put  
8 the children of the city of Tracy over these three  
9 pipelines because they're inherently dangerous.

10 Thank you, Mr. Sarvey.

11 HEARING OFFICER CELLI: No further questions.

12 Any re-cross?

13 MR. SARVEY: No further questions of myself.

14 HEARING OFFICER CELLI: Re-cross by the  
15 applicant?

16 MR. WHEATLAND: I'd like to move the admission of  
17 Exhibit 71.

18 HEARING OFFICER CELLI: Any objection of the  
19 admission of Exhibit 71, Mr. Sarvey?

20 MR. SARVEY: I have no objection. I welcome it.

21 HEARING OFFICER CELLI: Mountain House?

22 MR. GROOVER: None.

23 HEARING OFFICER CELLI: Mr. Dighe?

24 MR. DIGHE: None.

25 HEARING OFFICER CELLI: Mr. Wilson?

1 MR. WILSON: None.

2 HEARING OFFICER CELLI: Mr. Singh?

3 MR. SINGH: No objection. Can I can one  
4 question.

5 HEARING OFFICER CELLI: One moment. Mr. Simpson,  
6 any objection?

7 MR. SIMPSON: No objection.

8 HEARING OFFICER CELLI: Staff?

9 STAFF COUNSEL WILLIS: No objection.

10 HEARING OFFICER CELLI: 71 is received.

11 (Whereupon the above-referenced document  
12 was admitted into evidence by the  
13 Hearing Officer.)

14 MR. WHEATLAND: I have no further questions.

15 HEARING OFFICER CELLI: Thank you.

16 And you had a question?

17 MR. WHEATLAND: Object.

18 HEARING OFFICER CELLI: I just want to hear what  
19 his question is.

20 MR. SINGH: I wants to ask Sarvey, the  
21 nondisclosure he has signed, it is for how many years? Is  
22 it nondisclosure period is over? Does it have a limit?

23 MR. SARVEY: Three years, Mr. Singh.

24 HEARING OFFICER CELLI: I'm going to ask you to  
25 ask him off line when you are -- when you can talk amongst



1   yourself.

2               MR. SARVEY:   Three years.

3               MR. SINGH:   So you are still in the time frame of  
4   the three years.

5               MR. SARVEY:   Yes, I am there's about --

6               MR. WHEATLAND:  Objection.  This is totally out  
7   of order.

8               HEARING OFFICER CELLI:  How is that?  Because he  
9   redirected and so there is going to be a re-cross.

10              MR. WHEATLAND:  But he didn't redirect on the  
11   question of the confidentiality agreement.  It goes beyond  
12   the scope of the redirect.

13              HEARING OFFICER CELLI:  Well, the cat is out of  
14   the bag.  It's too late.  It's mute.

15              Anything further, Mr. Dighe?

16              MR. DIGHE:  No.

17              HEARING OFFICER CELLI:  Okay.  Mr. Wilson?

18              MR. WILSON:  None.

19              HEARING OFFICER CELLI:  Okay.  We've heard from  
20   Mr. Singh.

21              Mr. Simpson, anything further?

22              MR. SIMPSON:  No, sir.  I put you on mute.  It  
23   might take me a respond when you speak to me.

24              HEARING OFFICER CELLI:  Thanks for letting us  
25   know that.

1           Staff?

2           STAFF COUNSEL WILLIS: No.

3           HEARING OFFICER CELLI: With that, where we stand  
4 is we've now heard from all the witnesses with regard to  
5 hazardous materials management. So unless there is  
6 anything further on hazardous materials, we're about to  
7 close the topic. Is there anything -- any party that  
8 hasn't been heard from yet? Oh, it looks like we have  
9 one.

10           MR. GALATI: Just one thing and then I can leave.  
11 I just wanted to make absolutely clear to the record there  
12 was an allegation of an ex parte communication between the  
13 Committee and myself.

14           So that everybody is a clear exactly what  
15 happened, when I showed up here, Mr. Celli and the  
16 Committee came out and said, "Are you going to testify?"  
17 And I said, "No. I am a lawyer I don't testify. I am not  
18 a witness." They said, "What do you plan to do?" I said,  
19 "I plan to come in and explain PG&E's position. Would  
20 that be okay?" They said, "Yes." I came in and gave  
21 that. That was the substance of our communication. There  
22 was no ex parte comment about anything of substance.

23           I know how these things spread. I wanted to make  
24 sure the Committee was not later on in breach and in all  
25 kinds of other horrible statements that are made in

1 business meetings there was an ex parte communication.

2 There was not.

3 HEARING OFFICER CELLI: Thank you. I just want  
4 to add to that that we asked Mr. Galati in our  
5 conversation what PG&E's position would be with regard to  
6 a subpoena and Mr. Galati said they would oppose or resist  
7 a subpoena. And so that was the subject matter of that  
8 conversation.

9 MR. SIMPSON: And that doesn't totally respond to  
10 my objection in that I have no idea what it said other  
11 communication has been with PG&E between the Commission  
12 and PG&E, if this has been the only communication with the  
13 consideration of PG&E not being a party has that  
14 (inaudible) our proceeding and is there a whole side  
15 proceeding that we don't know about.

16 HEARING OFFICER CELLI: There isn't. And the  
17 Committee has had no conversations with PG&E that were  
18 anything other than a procedural nature. And so since  
19 there has been no substantive communication, there's been  
20 no ex parte communication.

21 Now, having said that and having now heard all of  
22 the evidence with regard to hazardous materials, we are  
23 now on to biological resources. The only people who had  
24 asked to cross-examine regarding biology, biological  
25 resources -- Mr. Sarvey, were you going to call Mr.

1 Smallwood?

2 MR. SARVEY: No. I'm waiting for the biological  
3 opinion. That's what my prehearing conference says.

4 HEARING OFFICER CELLI: So Mr. Sarvey had asked  
5 to cross-examine witnesses limited to noise and biological  
6 resources, if I have that correctly.

7 MR. SARVEY: No. That was cross talk when we  
8 were talking about whether I had issues with noise or  
9 visual. But in fact, I had questions beyond that.

10 HEARING OFFICER CELLI: Okay. So let me just --  
11 I want to show -- is there anyone here who had questions  
12 with regard to biology besides Mr. Sarvey?

13 Mountain House?

14 MR. GROOVER: None.

15 HEARING OFFICER CELLI: Mr. Dighe?

16 MR. DIGHE: None.

17 HEARING OFFICER CELLI: Mr. Wilson?

18 MR. WILSON: None.

19 HEARING OFFICER CELLI: Mr. Singh?

20 MR. SINGH: I have some. Can I ask?

21 HEARING OFFICER CELLI: When we get to you. I'm  
22 just asking to see whether you did.

23 Mr. Simpson?

24 MR. SIMPSON: Yes, I do.

25 HEARING OFFICER CELLI: Okay.

1           MR. WHEATLAND: But Mr. Simpson did not identify  
2 this as a topic for which he had --

3           MR. SIMPSON: Yes, I did.

4           STAFF COUNSEL WILLIS: Actually, Mr. Simpson did  
5 during the prehearing conference. But it was only limited  
6 to nitrogen deposition.

7           HEARING OFFICER CELLI: So I do have Mr. Simpson  
8 asking about biological resources. So we have applicant  
9 with Todd Elwood and we have staff with Sara Keeler. How  
10 did you want to proceed?

11          MR. WHEATLAND: Do any of the parties have  
12 questions of our witness?

13          HEARING OFFICER CELLI: Let me go around and ask  
14 that question.

15          Mr. Sarvey, do you have any questions of  
16 applicant's witness with regard to biological resources?

17          MR. SARVEY: None.

18          HEARING OFFICER CELLI: Mountain House? No. Mr.  
19 Dighe says no. Mr. Wilson says no. Mr. Singh?

20          MR. SINGH: No.

21          HEARING OFFICER CELLI: Says no. Mr. Simpson,  
22 any questions?

23          MR. SIMPSON: No.

24          HEARING OFFICER CELLI: Okay. Staff?

25          MR. WHEATLAND: I would like to move the

1 admission of our exhibits on biological resources by  
2 declaration.

3 HEARING OFFICER CELLI: Okay. Go ahead.

4 MR. WHEATLAND: The exhibits are 24, 28, 29, 31,  
5 36, 39, 408, 44, 47, 48, 53, 5 6, 58, and 60.

6 HEARING OFFICER CELLI: Okay. Any objection to  
7 moving into evidences exhibits 24, 28, 29, 31, 36, 39,  
8 408, 44, 47, 48, 53, 5 6, 58, or 60? Mr. Sarvey?

9 MR. SARVEY: No objection.

10 HEARING OFFICER CELLI: Mountain House, any  
11 objection?

12 MR. GROOVER: None.

13 HEARING OFFICER CELLI: Any objection, Mr. Dighe?

14 MR. DIGHE: None.

15 HEARING OFFICER CELLI: Mr. Wilson?

16 MR. WILSON: None.

17 HEARING OFFICER CELLI: Mr. Singh, any objection?

18 MR. SINGH: No.

19 HEARING OFFICER CELLI: Any objection, Mr.  
20 Simpson?

21 MR. SIMPSON: No.

22 HEARING OFFICER CELLI: And any objection, staff?

23 STAFF COUNSEL WILLIS: No.

24 HEARING OFFICER CELLI: Okay. Those exhibits are  
25 received.

1           (Whereupon the above-referenced documents  
2           were received into evidence by the  
3           Hearing Officer.)

4           HEARING OFFICER CELLI:  Witnesses have been  
5  called.  Let's get those sworn.

6           MR. WHEATLAND:  I think we just --

7           HEARING OFFICER CELLI:  I mean staff's witnesses.  
8           (Whereupon the witness was sworn.)

9           MS. KEELER:  Yes.

10          MR. PETTY:  Please state and spell your name for  
11  the record.

12          MS. KEELER:  My name is Sara Keeler.  S, as in  
13  Sam, a-r-a.  K-e-e-l-e-r.

14          HEARING OFFICER CELLI:  You may proceed.

15                                 DIRECT EXAMINATION

16          STAFF COUNSEL WILLIS:  Ms. Keeler, was the  
17  statement of your qualifications attached to your  
18  testimony?

19          MS. KEELER:  Yes.

20          STAFF COUNSEL WILLIS:  Could you please restate  
21  your education experience as it pertains to biological  
22  resource?

23          MS. KEELER:  I graduated from US Davis with a  
24  Bachelor's of science in evolution and ecology.  I've  
25  Avenue worked in the environmental field since 2002 and

1 worked in the Environmental Protection Office in the  
2 Siting Division since December of 2009.

3 STAFF COUNSEL WILLIS: Did you prepare the  
4 testimony entitled "Biological Resources in the  
5 Supplemental Staff Assessment" marked Exhibit 301.

6 MS. KEELER: Yes.

7 STAFF COUNSEL WILLIS: Do you have changes to  
8 your written testimony that you're proposing tonight?

9 MS. KEELER: Yes. Changes to LORS table on  
10 4.2-48. In my opinion, it is acceptable to change the  
11 sections marked undetermined to yes for regarding project  
12 compliance with the Federal Endangered Species Act of  
13 Sections 404 and 401 of the Clean Water Act.

14 STAFF COUNSEL WILLIS: And with those changes, do  
15 the opinions contained in your testimony represent your  
16 best professional judgment?

17 MS. KEELER: Yes.

18 STAFF COUNSEL WILLIS: Ms. Keeler, did you  
19 analyze direct impacts of the project on biological  
20 resources?

21 MS. KEELER: Yes.

22 STAFF COUNSEL WILLIS: Did you analyze indirect  
23 impacts of the project on biological resources?

24 MS. KEELER: Yes.

25 STAFF COUNSEL WILLIS: Did you analyze cumulative



1 impacts of the project on biological resources?

2 MS. KEELER: Yes.

3 STAFF COUNSEL WILLIS: In your professional  
4 opinion, does the project pose any significant adverse  
5 impacts to biological resources?

6 MS. KEELER: Yes. Without mitigation.

7 STAFF COUNSEL WILLIS: Are you proposing any  
8 mitigation?

9 MS. KEELER: Yes.

10 STAFF COUNSEL WILLIS: Could you describe the  
11 mitigation that you're proposing or what it would  
12 result -- I'm sorry. Just describe the mitigation.

13 MS. KEELER: Certainly. I'm proposing  
14 compensatory mitigation.

15 HEARING OFFICER CELLI: You propose what?

16 MS. KEELER: Compensatory mitigation.

17 HEARING OFFICER CELLI: Thank you.

18 STAFF COUNSEL WILLIS: With the mitigation, would  
19 the project result in less than significant adverse  
20 impacts to biological resources?

21 MS. KEELER: Yes.

22 STAFF COUNSEL WILLIS: A question came up during  
23 the prehearing conference about the potential for noise  
24 impact to corresponding greenhouse in the area. Did you  
25 analyze the potential noise impact to corresponding

1 greenhouse.

2 MS. KEELER: No, I did not.

3 STAFF COUNSEL WILLIS: Why not?

4 MS. KEELER: Corresponding greenhouse are not a  
5 sensitive biological resource and in my opinion they would  
6 become acclimated to noise in their environmental as they  
7 have in other areas.

8 STAFF COUNSEL WILLIS: Did you analyze biological  
9 impacts from water from the aqueduct?

10 MS. KEELER: No.

11 STAFF COUNSEL WILLIS: Why not?

12 MS. KEELER: Because to my understanding there is  
13 no net loss to the aqueduct.

14 STAFF COUNSEL WILLIS: Ms. Keeler, did you look  
15 at nitrogen deposition?

16 MR. SIMPSON: I didn't hear that last response.

17 HEARING OFFICER CELLI: There is no -- Mr.  
18 Simpson, I'm going to ask you to mute your phone because  
19 we're getting an echo. But the rest of the question,  
20 there was no net loss to the aqueduct was the testimony.

21 STAFF COUNSEL WILLIS: Ms. Keeler, can you look  
22 at nitrogen deposition in the area?

23 MS. KEELER: Yes. It's in my supplemental staff  
24 analysis, page 4.2-43. The nearest occurrence of a  
25 nitrogen limited habitat is 20 miles away from the

1 proposed project. And I found no need for further study  
2 of the issue.

3 STAFF COUNSEL WILLIS: Did you coordinate your  
4 assessment and propose mitigation with any other agency?

5 MS. KEELER: Yes. Primarily the Department of  
6 Fish and Game and U.S. Fish and Wildlife Service. Though  
7 I also consulted other entities as appropriate.

8 STAFF COUNSEL WILLIS: And will you please  
9 briefly explain how you coordinated your effort?

10 MS. KEELER: Certainly. I talked with the  
11 Department of Fish and Game and U.S. Fish and Wildlife  
12 Service about this project on multiple indications from  
13 January of 2010 through publishing the supplemental staff  
14 assessment, Marcia Grefsrud of Fish and Game, Kim Spires  
15 of the Fish and Wildlife Service. And I discussed the  
16 potential impacts of the project and appropriate  
17 mitigation in several conversations. In addition, both  
18 Ms. Grefsrud, and Ms. Spires routinely communicated with  
19 me about direction or information they provided the  
20 applicant, including on the topics of impacts and  
21 mitigation requirements. Both Ms. Grefsrud and Ms. Spires  
22 were involved in the development of the Conditions of  
23 Certification. Both Ms. Grefsrud and Ms. Spires commented  
24 on draft biological resources staff assessment.  
25 Ms. Spires replacement within the Fish and Wildlife

1 service, Ms. Grefsrud commented on the draft supplemental  
2 staff assessment.

3 STAFF COUNSEL WILLIS: Has U.S. Fish and Wildlife  
4 Service accepted the biological assessment?

5 MS. KEELER: No, the U.S. Fish and Wildlife  
6 Service has not accepted a biological assessment.

7 STAFF COUNSEL WILLIS: And since they have not,  
8 does that pose any problems to your analysis?

9 MS. KEELER: An accepted biological assessment  
10 would give us assurance that our conditions and Fish and  
11 Wildlife Service's mitigation in the biological opinion  
12 would be complimentary. Typically, we use a biological  
13 assessment to determine the project would be in compliance  
14 with the Federal Endangered Species Act. However, staff's  
15 Conditions of Certification were prepared in close  
16 coordination with the Fish and Wildlife Service and we  
17 have prepared our conditions to the best of our abilities  
18 to coordinate with the requirements we expect to see  
19 included in the biological opinion.

20 STAFF COUNSEL WILLIS: Does the Energy Commission  
21 need a biological opinion in order make a decision?

22 MS. KEELER: No. In most siting cases, the  
23 biological opinion is finalized after the Commission makes  
24 its final decision, which is why we work closely with the  
25 other agencies prior to publishing our analysis.

1           I can add to that. The applicant is required to  
2 follow federal law and will comply with both state and  
3 federal conditions. And if one condition is more  
4 stringent than the other, they are required to comply with  
5 the more stringent condition.

6           STAFF COUNSEL WILLIS: Have you received any  
7 indication when the U.S. Fish and Wildlife Service will be  
8 publishing the biological opinion?

9           MS. KEELER: Yes, I have actually. I've been  
10 talking to Fish and Wildlife service over the past few  
11 weeks and they expect -- they anticipate they will have a  
12 complete biological opinion in early May, at the beginning  
13 of May. But in fact I know there is a draft already in  
14 progress.

15          STAFF COUNSEL WILLIS: Have you included in your  
16 analysis and as part of the Conditions of Certification  
17 what you expected to be in the biological opinion?

18          MS. KEELER: Yes, although the biological opinion  
19 may contain additional requirements.

20          STAFF COUNSEL WILLIS: Is there an issue with  
21 mitigation lands being adjacent to the power plant?

22          MS. KEELER: No. It is preferable that  
23 compensatory mitigation be provided near the area of  
24 impact. This will increase the likelihood of protecting  
25 not only the same species but the same population of the

1 protected species.

2 STAFF COUNSEL WILLIS: Have you included in your  
3 conditions of certification the requirements the  
4 Department of Fish and Game would include and the State  
5 (inaudible) take permit?

6 MS. KEELER: Yes, including in the general impact  
7 avoidance and minimization measures, which is Bio 7, and  
8 the conditions dealing with San Joaquin kit fox, which is  
9 Bio 17, California tiger salamander which is Bio 10, and  
10 Swainson's Hawk, which is Bio 15.

11 STAFF COUNSEL WILLIS: Do you believe the  
12 conditions of certification fully mitigate impact to  
13 biological resources to less than significant?

14 MS. KEELER: Yes.

15 STAFF COUNSEL WILLIS: In your opinion --

16 MS. ALLEN: Is the project in compliance with all  
17 laws, ordinances, regulations, and standards?

18 MS. KEELER: In my opinion, yes. Upper  
19 management and I you have contacted the Fish and Wildlife  
20 Service repeatedly to attempts to expedite the review  
21 process and seek updates. The Fish and Wildlife Service  
22 has been unable to review the revised biological  
23 assessment completely due to staffing issues and court  
24 mandated deadlines on other projects.

25 Without an accepted biological assessment, we

1 have some uncertainty about the finer requirements that  
2 will be in the biological opinion. However, as I stated  
3 earlier, our analysis was prepared in close contact with  
4 the Fish and Wildlife Service and was reviewed at several  
5 points by the Fish and Wildlife Service. I have  
6 incorporated the Fish and Wildlife Service's comments in  
7 my analysis and after discussions with the Fish and  
8 Wildlife Service I have no indication that there are any  
9 further issues on their part with my current analysis.

10 STAFF COUNSEL WILLIS: Does that conclude your  
11 testimony?

12 MS. KEELER: Yes.

13 STAFF COUNSEL WILLIS: Thank you.

14 This witness is available for cross-examination.

15 HEARING OFFICER CELLI: Thank you.

16 Mr. Sarvey, please.

17 MR. SARVEY: I feel like I'm in a concentration  
18 camp.

19 HEARING OFFICER CELLI: Pardon me?

20 MR. SARVEY: I feel like I'm in a concentration  
21 camp.

22 HEARING OFFICER CELLI: I'm missing that one.

23 MR. SARVEY: Just been here so long.

24 CROSS-EXAMINATION

25 MR. SARVEY: You stated that the use of fresh

1 water would be okay because it would lead to no net loss  
2 of fresh water; is that correct?

3 MS. KEELER: My understanding is that this  
4 project will have no net loss on the aqueduct.

5 MR. SARVEY: Is there any impacts from the  
6 recycled water that would be used in this project from  
7 dumping it in the river?

8 MS. KEELER: That is not part of my testimony.  
9 That's not something I looked at.

10 MR. SARVEY: So you don't have any idea whether  
11 the impact of the recycled water would be on the aquatic  
12 species?

13 MS. KEELER: That's not something I looked at.

14 MR. SARVEY: On page 4.2-44 of your testimony,  
15 you said birds that nest within annual grass land could be  
16 effected by noise from the power plant. Would that be the  
17 only sensitive habituating species that would be disturbed  
18 by the project?

19 MS. KEELER: Yes. That is the only resource that  
20 I identified.

21 MR. SARVEY: And do you have any idea how far off  
22 the property line that the noise level exceeds 60 DBA for  
23 this project?

24 MS. KEELER: That's actually in my testimony.  
25 And a conservative estimate was -- let as see here. On



1 page 4.2-44 says a conservative estimate -- starts on  
2 4.2-43. Says a conservative estimate indicates noise  
3 would attenuate to less than 60 DBA at a distance of one  
4 quarter mile from the power plant site. And that's not  
5 taking into account topography in the area.

6 MR. SARVEY: Do you have any idea how far off  
7 that is from the property line?

8 MS. KEELER: From the property line?

9 MR. SARVEY: From the property line.

10 MS. KEELER: It's a quarter mile of the project  
11 site. I can't tell you how far off the property line that  
12 is.

13 MR. SARVEY: Have you reviewed the grading plan  
14 for this project for impacts to sensitive species?

15 MS. KEELER: I have -- I am aware there is  
16 grading and I've been given the acreages and the features  
17 that would be subject to grading. And that was taken into  
18 amount in my analysis.

19 MR. SARVEY: Did you discover any impact to  
20 sensitive species from the plant?

21 MS. KEELER: Areas that would be graded are  
22 considered permanent loss of habitat and potential direct  
23 mortality.

24 MR. SARVEY: How about the indirect of the  
25 grading plant in terms of soil distribution and runoff?

1 MS. KEELER: Soil disturbance and runoff, I can't  
2 comment specifically on a grading plan. But I can say  
3 that indirect impacts from sediment are addressed through  
4 my conditions.

5 MR. SARVEY: Have you seen a grading plan?

6 MS. KEELER: I don't recall seeing a specific  
7 grading plan. If it was part of the AFC, it was something  
8 I looked at.

9 MR. SARVEY: Have you analyzed the construction  
10 of stormwater NPDES permit for impacts to sensitive  
11 species on and off the site?

12 MS. KEELER: Stormwater NPDES permit?

13 STAFF COUNSEL WILLIS: Just as a point of  
14 clarification. During the prehearing conference, there  
15 were a limited of about two or three questions Mr. Sarvey  
16 and Mr. Simpson had. One was regarding the noise and the  
17 corresponding greenhouse and nitrogen deposition from Mr.  
18 Simpson. It seems like we're going way off base here and  
19 more and more questions have been developed since that  
20 point.

21 HEARING OFFICER CELLI: Let me ask you, Mr.  
22 Sarvey how many questions you have, please.

23 MR. SARVEY: Probably 10 or 15.

24 HEARING OFFICER CELLI: Of those would you take  
25 and look and see how many you need to ask a soil and water

1 expert rather than biological resources expert?

2 MR. SARVEY: I'm basically asking about her  
3 analysis of these particular actions on the project. And  
4 I couldn't ask the soil and water person what impacts of  
5 biological resources was of their grading plan or -- I  
6 mean, that would be pretty farfetched. They would tell me  
7 I'm not a biologist. You should have asked that in  
8 biology. So I'm asking it.

9 HEARING OFFICER CELLI: Okay. It's relevant.  
10 I'll allow it.

11 MS. KEELER: Sure. I can't recall if I've  
12 actually seen an NPDES permit. Was that the question?

13 MR. SARVEY: Uh-huh.

14 MS. KEELER: I have looked at impacts of soil and  
15 to water in the area.

16 MR. SARVEY: Have you reviewed the landscape plan  
17 for the project?

18 MS. KEELER: I'm sorry what was the question?

19 MR. SARVEY: Have you reviewed the landscape plan  
20 for the project?

21 MS. KEELER: I have not seen a landscape plan for  
22 the project to my recollection.

23 MR. SARVEY: Do you have any recommendation for  
24 the landscape plan?

25 MS. KEELER: We do address issues of re

1 vegetation and in general species you can't use certain  
2 types of species it would be considered like noxious weeds  
3 and that would be something that is in like emissions.

4 MR. SARVEY: How about like raptor habitat?

5 MS. KEELER: Can you clarify your question,  
6 please?

7 MR. SARVEY: Well, you haven't reviewed the  
8 landscaping plan. But do you have some specific  
9 suggestions or some sense of a species that could be  
10 picked off by raptors? Do you have any recommendation to  
11 the landscaping plan to prevent that?

12 MS. KEELER: I think in general I would make  
13 recommendations on the landscaping plan when I was shown a  
14 landscaping plan. And that would in my conditions I in  
15 general discussed those with other agencies and in that  
16 particular instance I would probably want to discuss that  
17 issue with the other agencies to see what their concerns  
18 were.

19 MR. SARVEY: How does the noise levels from the  
20 MEP compare with the noise levels generated by the Byron  
21 cogeneration project?

22 MS. KEELER: I do not know the answer to that.

23 MR. SARVEY: Have you analyzed the cumulative  
24 noise impact special status species from both these plants  
25 operation?

1 MS. KEELER: No.

2 MR. SARVEY: The constant starts and stops and  
3 power plant noise affects special status species on the  
4 property more than a constant power plant noise?

5 MS. KEELER: Constant starts and stops within  
6 what time frame?

7 MR. SARVEY: Within the operation of a peaker.  
8 It starts and stops unpredictable.

9 MS. KEELER: The continuous noise is species  
10 would more typically become habituated to a continuous  
11 noise.

12 MR. SARVEY: Exhibit 301 page 4.12-9 states that  
13 the proposed developed site run off would be managed with  
14 a series of inlets and storm drain pipes that would convey  
15 runoff to an on-site extended detention basin at the north  
16 ends of the project site. Is the detention basin going to  
17 be covered?

18 MS. KEELER: Can you give me that page number  
19 again, please?

20 MR. SARVEY: 4.12-9.

21 STAFF COUNSEL WILLIS: That's is her testimony on  
22 visual resources.

23 HEARING OFFICER CELLI: Is there a objection?

24 STAFF COUNSEL WILLIS: I did say objection. This  
25 is a biological resource witness.

1 HEARING OFFICER CELLI: Sustained.

2 MR. SARVEY: Well, I obviously quoted the wrong  
3 page.

4 Have you reviewed the proposed developed sign off  
5 runoff and the detention basin?

6 MS. KEELER: Could you repeat the question?

7 MR. SARVEY: Are you aware that they planned a  
8 detention basin at the north ends of the project site?

9 MS. KEELER: I'm aware there is a place where  
10 runoff is going into.

11 MR. SARVEY: Will that detention basin be  
12 covered?

13 MS. KEELER: No.

14 MR. SARVEY: Do you anticipate any impact to  
15 migratory birds from the sediment and chemicals that might  
16 be in that detention basin?

17 MS. KEELER: No.

18 MR. SARVEY: And why is that?

19 MS. KEELER: The detention basin is designed to  
20 release water within a 48-hour period. It won't be  
21 holding water, which is usually what we'll analyze for  
22 impacts to birds.

23 MR. SARVEY: Did detention basin alter any of the  
24 slopes that the aquatic species are depending on?

25 MS. KEELER: To my understanding, no.

1           MR. SARVEY: Alameda County general plan ECAP  
2 policy 126 calls for a no net loss of wet lands within the  
3 county. How do you replace wet lands that have been  
4 displaced by the MEP?

5           MS. KEELER: I actually have addressed this --  
6 let me find it. That would be -- see if I can find a page  
7 for you. I talked to someone at Alameda County, and their  
8 input was that they prefer to see impacts to wetlands  
9 mitigated in the best possible way. And if that was not  
10 going to be within the county, then as long as was in a  
11 way that was acceptable to Fish and Wildlife service and  
12 therefore also the best possible way they were fine with  
13 it. So if you give me a moment, I might be able to find  
14 that if you'd like me to.

15           MR. SARVEY: You don't need to do that. Your  
16 answer was fine.

17           How do you replace wetlands that have been lost  
18 to the development of the MEP.

19           MS. KEELER: Sorry?

20           MR. SARVEY: How do you replace wetlands that  
21 have been lost to the development of the MEP?

22           MS. KEELER: These will be mitigated -- there is  
23 mitigation that's required for loss of seasonal wetlands.

24           MR. SARVEY: Does that create new wet lands?

25           MS. KEELER: It is considered adequate

1 mitigation. They've been given options with purchasing  
2 considers at a mitigation bank is one of the options. And  
3 that was deemed acceptable to all the parties -- the  
4 agencies, including Alameda County.

5 MR. SARVEY: And these wetlands they're going the  
6 mitigate already exist. That's great.

7 MS. KEELER: They actually -- I have not seen  
8 what the exact proposal will be. There are a few -- there  
9 are options for mitigation within the conditions.

10 MR. SARVEY: So there are no plans or no required  
11 mitigation to create new wet lands?

12 MS. KEELER: No, there is no requirement --

13 MR. SARVEY: To replace the other once?

14 MS. KEELER: No, there is no requirement to make  
15 new.

16 MR. SARVEY: On page 4.2-4, Exhibit 301, you list  
17 LORS to the project. One of the LORS is public resources  
18 Code Section 25500 and 25527, which prohibits siting of  
19 facilities in certain areas of critical concern for  
20 biological resources, such as ecological preserve,  
21 refuges, et cetera. Can you explain what types of areas  
22 public resource code 25500 and 25527 prevents siting in?

23 MS. KEELER: Well, the table says it's such as  
24 ecological preserves and refuge and areas like that.

25 MR. SARVEY: Would that include critical habitat?



1 MS. KEELER: Not to my knowledge.

2 MR. SARVEY: Pardon me?

3 MS. KEELER: Yes, I'll stay with my answer, which  
4 was not to my knowledge.

5 MR. SARVEY: So according to your testimony in  
6 Exhibit 301, page 4.2-45, the project is located within  
7 the CCS to be critical habitat unit for California  
8 red-legged frog. And according to your testimony, it  
9 would impact their habitat. Is that not the habitat that  
10 is being referred to by section 25500 and 25527?

11 MS. KEELER: So critical habitat is a federal  
12 designation. And red-legged frog is not a State listed  
13 species.

14 MR. SARVEY: Does the Byron conservation bank  
15 qualify as an area under 2500?

16 MS. KEELER: I can be pretty confident that the  
17 Energy Commission would not approve siting a power plant  
18 in a conservation bank.

19 MR. SARVEY: Does your analysis have an estimate  
20 how many acres of habitat have been displaced or impaired  
21 by all these water and energy developments in the project  
22 area?

23 MS. KEELER: I do have a cumulative analysis  
24 section, but I don't have a specific number for you.

25 MR. SARVEY: How many acres would have to be

1 displaced before you consider it a cumulative impact under  
2 CEQA?

3 MS. KEELER: I don't have a specific number for  
4 you.

5 MR. SARVEY: Chemicals from the road, the power  
6 plant site and other impervious surfaces effect the tiger  
7 salamander, red-legged frog, and vernal pool species?

8 MS. KEELER: I have numerous -- it's addressed  
9 throughout any conditions. If this project were approved,  
10 my conditions have a lot of requirements to protect off  
11 site areas from indirect impacts from chemicals and things  
12 like that. And that would also be further addressed in  
13 soil and water.

14 MR. SARVEY: Does your cumulative analysis  
15 consider the hundreds of birds and prey that are annually  
16 killed by the wind turbines?

17 MS. KEELER: I did not look at wind atmosphere  
18 bins for my cumulative analysis.

19 MR. SARVEY: Okay. On page 4.2-41 of your  
20 testimony you state because the project exhaust stacks  
21 and -- strike that.

22 Would the -- in your testimony, you speak to the  
23 lighting of the project and did you analyze the impact  
24 that the aviation lighting would have on the special  
25 status species on the project site and adjacent?

1 MS. KEELER: Aviation lighting?

2 MR. SARVEY: Uh-huh.

3 MS. KEELER: No.

4 MR. SARVEY: Okay. That's all I have. Thank  
5 you.

6 HEARING OFFICER CELLI: Thank you, Mr. Sarvey.  
7 This is biological resources.

8 Mr. Dighe, any questions?

9 MR. GROOVER: I have one question based on the  
10 testimony given.

11 HEARING OFFICER CELLI: Go ahead and ask your one  
12 question.

13 MR. GROOVER: Thank you. You testified that you  
14 haven't looked at the effects of the reclaimed water that  
15 could possibly be used for this project on aquatic  
16 biology. The two sources of reclaimed water would both  
17 have NPDES permits from the State of California and they  
18 both tend to have the same requirements. Those  
19 requirements of course list like three different things  
20 that they have that they discharge into the water for.

21 But of main interest, the three at this late date  
22 that I can remember off the top of my head are electro  
23 conductivity is Mercury and THMs. If those are actually  
24 items of concern and by the Water Board, would you also  
25 consider that those specific three might be a problem for

1 the aquatic biology in the area?

2 STAFF COUNSEL WILLIS: I need to object because I  
3 don't understand the question. Why are you discussing --  
4 that's not the source. Is it a hypothetical question?

5 HEARING OFFICER CELLI: I don't know either,  
6 actually. Mr. Groover.

7 MR. GROOVER: There's been some discussion. I  
8 believe there's going to be some discussion. For  
9 instance, Mr. Hoffman discussed that there can be nothing  
10 better than zero water use.

11 HEARING OFFICER CELLI: No net loss.

12 MR. GROOVER: If you take reclaimed water and you  
13 don't put bad stuff into the water, that could be better  
14 than no net loss. So I'm asking staff's expert if  
15 actually putting bad stuff -- not putting bad stuff in the  
16 water is a good thing.

17 HEARING OFFICER CELLI: I think that's an  
18 argumentative question.

19 MR. GROOVER: It's a technical question from a  
20 wildlife biologist about specific constituents that the  
21 state of California regulates reclaimed water putting into  
22 the water and their effects on wildlife biology.

23 HEARING OFFICER CELLI: This was a big question  
24 and a long question. Did you get the question?

25 MS. KEELER: I think I could need him to repeat

1 the question.

2 HEARING OFFICER CELLI: All right. Let's see if  
3 he can get this out.

4 MR. GROOVER: Can I repeat it without the  
5 backgrounds of --

6 HEARING OFFICER CELLI: Yes.

7 MR. GROOVER: Would constituents such as THMs,  
8 electro conductivity and mercury being placed in the water  
9 be adversarial or unhealthy to the aquatic biology?

10 MR. WHEATLAND: In the old river where it is  
11 currently being dumped?

12 MR. GROOVER: That's correct.

13 MS. KEELER: I don't think I can answer this  
14 question. This is not within my -- yeah.

15 HEARING OFFICER CELLI: Thank you.

16 Mr. Dighe, any questions?

17 MR. DIGHE: None.

18 HEARING OFFICER CELLI: Thank you. Mr. Singh,  
19 any questions of this witness?

20 MR. SINGH: Can I make a request to staff not to  
21 whisper or direct messages here? I heard Mr. Morgan was  
22 asking a question and then she asked what she whispered or  
23 made an action. So if we can avoid that, that will be  
24 really appreciated.

25 STAFF COUNSEL WILLIS: The instruction I gave her

1 is to answer only if she knows. I didn't turn my mike on.

2 HEARING OFFICER CELLI: Let's try to avoid that.

3 Thank you, Mr. Singh.

4 Mr. Simpson --

5 MR. SINGH: I had a question.

6 HEARING OFFICER CELLI: Go ahead.

7 MR. SINGH: So as a biologist, what type of  
8 fiduciary responsibilities you have?

9 STAFF COUNSEL WILLIS: Objection. Relevance and  
10 vagueness.

11 HEARING OFFICER CELLI: Fiduciary duties?

12 MR. SINGH: Yeah. Fiduciary responsibility and  
13 duties.

14 HEARING OFFICER CELLI: Sustained.

15 MR. SINGH: So let us take due to power plant, do  
16 you agree to first take they fly more higher to stay away  
17 from the flow and stay away from the power plant?

18 MS. KEELER: I addressed impacts potential  
19 impacts from thermal plumes quite thoroughly starting on  
20 page 4.2-42. But I did not find that there would be  
21 significant impacts related to birds or any other  
22 biological resource in the thermal plume.

23 MR. SINGH: My question is not the impacts on the  
24 birds, but the birds tends to stay away from the power  
25 plant and they fly high.

1 MS. KEELER: In my testimony, what I say is that  
2 I expect that there would be minimal flight or path  
3 difference. Minimal movement of avoidance.

4 MR. SINGH: So there will be a movement of  
5 avoidance to the power plant the birds will do?

6 MS. KEELER: If we see anything, I would expect  
7 it to be minimal.

8 MR. SINGH: So did you see a couple of analysis  
9 the birds will stay away and go towards the Byron airport  
10 and they will take higher flights to stay away from the  
11 plume and that can be hazardous to the flights?

12 MS. KEELER: No. And I addressed this in my --  
13 thoroughly in my discussion on 4.2-22.

14 HEARING OFFICER CELLI: So you disagree with that  
15 premise?

16 MS. KEELER: I do.

17 HEARING OFFICER CELLI: Okay. Next question.

18 MR. SINGH: That's all I have. Thank you.

19 HEARING OFFICER CELLI: Thank you. Mr. Simpson,  
20 can you hear me? You'll need to unmute.

21 MR. SIMPSON: I understand.

22 HEARING OFFICER CELLI: Go ahead. Any questions  
23 of the biology expert?

24 MR. SIMPSON: Yes, I do. I'll park the car for a  
25 minute.

1 HEARING OFFICER CELLI: We can hear you fine.

2 MR. SIMPSON: So you studied the potential for  
3 bird impact on the plume; is that correct?

4 MS. KEELER: I addressed the potential for  
5 impacts to and from biological resources from thermal  
6 plumes, yes.

7 MR. SIMPSON: So my question is: Our  
8 understanding is that this plume will go 2,000 feet in the  
9 air at a high rate and a high temperature. If a bird  
10 impacts that plume, will that pose a problem for the bird?

11 MS. KEELER: If a bird --

12 STAFF COUNSEL WILLIS: I'm going to object.  
13 Assumes facts not in evidence.

14 HEARING OFFICER CELLI: I'm going to overrule the  
15 objection and let this witness answer if she knows.

16 MS. KEELER: Well, I don't think the bird will  
17 impact the plume, but I don't think that's what you were  
18 asking. Can you please repeat your question?

19 MR. SIMPSON: Sure. My question is regarding  
20 Avenue rear impacts on the plume. If a bird flies into  
21 the plume, that 450 degree plume --

22 HEARING OFFICER CELLI: Mr. Simpson. This is Ken  
23 Celli. I'm going to ask the witness. If the birds flies  
24 into the plume, what will happen?

25 MR. SIMPSON: Thank you.



1 MS. KEELER: I don't expect that -- I don't  
2 expect bird mortality from a plume. If it's something  
3 that -- I would expect that if required the bird would bin  
4 ever minimally alter their path to avoid the plume, if  
5 necessary for that bird's safety.

6 HEARING OFFICER CELLI: Thank you.

7 MR. SIMPSON: And how would the bird know about  
8 the plume?

9 MS. KEELER: Temperature change. And this is  
10 also based on discussions that I've had with people who've  
11 observed -- yeah.

12 HEARING OFFICER CELLI: Next question, Mr.  
13 Simpson.

14 MR. SIMPSON: Thank you. Did you study the  
15 fumigation impacts on the nearby I guess you would call  
16 lake or reservoir?

17 MS. KEELER: Fumigation? Was that your word?

18 MR. SIMPSON: Yes, fumigation.

19 MS. KEELER: I did not study -- I'm not sure --

20 HEARING OFFICER CELLI: She doesn't understand  
21 what you mean by fumigation, Mr. Simpson. Can you ask it  
22 another way?

23 MR. SIMPSON: Fumigation impacts are on air  
24 quality impact on a body of water or adjacent a body of  
25 water. I think it's pursuant to the temperature of the

1 water it draws the plumes towards it, nitrogen, particular  
2 matter, ammonia. Did you study any of the deposition or  
3 fumigation impacts? Deposition is the pollutants dropping  
4 on to the water or the species around the water?

5 STAFF COUNSEL WILLIS: I'm going to object. Is  
6 this a question on biology or air quality question?

7 HEARING OFFICER CELLI: Yes, it is. It's a  
8 biology question. And so the question is what -- from a  
9 biological perspective, what is the effects of air  
10 emissions on water? Aquatic life?

11 MS. KEELER: I discussed potential impacts from  
12 nitrogen, from this project with the other agencies and  
13 none of us had any concern about this issue.

14 MR. SIMPSON: I see. Is that in your report?

15 MS. KEELER: I talk about nitrogen deposition to  
16 soil, but this is not something that is included in my  
17 report as far as on water bodies.

18 MR. SIMPSON: I see. What about other  
19 pollutants? The formaldehyde, the chromium, the ammonia?  
20 Particular matter?

21 MS. KEELER: No. In my discussions of potential  
22 impacts like I said before with other agencies, this is  
23 not an issue that came up or was of concern to any of us.

24 MR. SIMPSON: I see.

25 And did you think that lack of concern on a

1 nitrogen deposition study or any modeling?

2 MS. KEELER: No.

3 HEARING OFFICER CELLI: The answer is no, Mr.  
4 Simpson.

5 MR. SIMPSON: Thank you.

6 You mention that the project would require  
7 mitigation. What are the impacts that required  
8 mitigation?

9 MR. WHEATLAND: Objection. The question is  
10 really broad and searching and Mr. Simpson did not  
11 identify these broad areas of inquiry in his prehearing  
12 conference statement on biology.

13 HEARING OFFICER CELLI: Maybe you can get more  
14 specific, Mr. Simpson.

15 MR. SIMPSON: I can try. I'm sorry I don't have  
16 the report in front of me. You've been to the site?

17 MS. KEELER: Yes.

18 MR. SIMPSON: Have you been to the site?

19 MS. KEELER: Yes.

20 HEARING OFFICER CELLI: That was yes.

21 MR. SIMPSON: Yes?

22 HEARING OFFICER CELLI: Yes.

23 MR. SIMPSON: Did you do the biological survey or  
24 reconnaissance at the site?

25 MS. KEELER: No. I did a site visit. It's not

1 my job to do a biological survey at the site.

2 MR. SIMPSON: Okay. So did you review a  
3 biological survey at the site?

4 MS. KEELER: Multiple.

5 HEARING OFFICER CELLI: That would be yes.

6 MR. SIMPSON: Thank you. And do you know what  
7 year those surveys were completed?

8 MR. WHEATLAND: Objection. This is really just  
9 searching broad discovery questions and it's not  
10 appropriate at this stage of the --

11 HEARING OFFICER CELLI: Mr. Simpson, all of that  
12 kinds of information should be in the SSA. And so I  
13 wonder do you have a number of questions you can tell us  
14 how many questions you have?

15 MR. SIMPSON: I think I'm almost done.

16 HEARING OFFICER CELLI: Okay.

17 MR. SIMPSON: Just a couple more. Three more.

18 HEARING OFFICER CELLI: Let's get to these three  
19 questions, please.

20 MR. SIMPSON: Okay. How far is the project from  
21 the nearest endangered species?

22 MS. KEELER: I don't think -- I would need a  
23 narrow err parameter of -- I would need -- I don't know  
24 what exactly parameter you would want me to use to answer  
25 that. I don't know where they are at this moment. These

1 are mobile species.

2 MR. SIMPSON: Is the farm land fertilized  
3 farmlands?

4 MS. KEELER: That's not within the scope of my  
5 analysis.

6 MR. SIMPSON: I see. That's all my questions.

7 HEARING OFFICER CELLI: Thank you, Mr. Simpson.  
8 Any redirect?

9 STAFF COUNSEL WILLIS: None.

10 HEARING OFFICER CELLI: Okay. Thank you,  
11 Ms. Keeler.

12 And Mr. York, these witnesses are excused.

13 Mr. Sarvey, none of the other parties seem to  
14 have any other biological resource witnesses; is that  
15 correct?

16 MR. SARVEY: I have no witnesses in biology other  
17 than Shawn Smallwood who's not going to produce anything  
18 until we get a biological opinion. Thank you.

19 HEARING OFFICER CELLI: With that, then is there  
20 a motion -- I think I have all of staff's exhibits in the  
21 record at this time for biology.

22 STAFF COUNSEL WILLIS: You do.

23 HEARING OFFICER CELLI: Do I have applicant's  
24 bio?

25 MR. WHEATLAND: Yes, you do.

1 HEARING OFFICER CELLI: Do I have all of Mr.  
2 Sarvey's for bio?

3 MR. SARVEY: Yes, you do.

4 HEARING OFFICER CELLI: Okay. And Mr. Dighe, I  
5 think I have all of your evidence in.

6 Mr. Singh, have you made a motion with regard to  
7 your evidence?

8 MR. SINGH: I think that was relate to the  
9 socioeconomic. Just want to make sure those evidence are  
10 therein the record.

11 HEARING OFFICER CELLI: Let's see. So your  
12 exhibits were Exhibits 800, 801, and 803.

13 MR. SINGH: Very correct.

14 HEARING OFFICER CELLI: And we haven't taken that  
15 evidence in yet; isn't that correct? Have I received that  
16 evidence?

17 MR. SINGH: It's already with you or CEC.

18 HEARING OFFICER CELLI: It was received?

19 MR. WHEATLAND: I do not believe those exhibits  
20 were received into evidence.

21 HEARING OFFICER CELLI: I don't think so either.  
22 I should have taken that during the time we talked about  
23 socioeconomic.

24 MR. SINGH: I send it through e-mail.

25 HEARING OFFICER CELLI: I know. I mean received

1 into evidence by weigh of motion.

2 MR. SINGH: Oh, okay.

3 HEARING OFFICER CELLI: So the exhibits are  
4 Exhibit 800, which is a discovery document, 801,  
5 environmental justice for racial minorities, and 803,  
6 Census tract 5203.

7 MR. SINGH: Very right.

8 HEARING OFFICER CELLI: Any objection, Mr.  
9 Wheatland?

10 MR. WHEATLAND: No objection, but I do have a  
11 couple of questions for Mr. Singh. These are the same as  
12 Mr. Dighe. I just wanted him to briefly state his  
13 qualifications and professional experience since he did  
14 not provide a resume or statement of qualification.

15 HEARING OFFICER CELLI: All right. Let me go  
16 around and make sure -- find out if there is any objection  
17 to bio on anyone else. Any objection Mr. Sarvey, did  
18 he -- no objection says Mr. Sarvey. He's away from his  
19 microphone at this moment.

20 Mountain House, any objection to Exhibits 800,  
21 801, or 803?

22 MR. GROOVER: None.

23 HEARING OFFICER CELLI: Mr. Dighe?

24 MR. DIGHE: None.

25 HEARING OFFICER CELLI: Mr. Singh, any -- these

1 are your exhibits. Mr. Simpson, any objection to  
2 certification proceeding's exhibits?

3 MR. SIMPSON: No objection.

4 HEARING OFFICER CELLI: Staff?

5 STAFF COUNSEL WILLIS: None.

6 HEARING OFFICER CELLI: Okay. Mr. Wheatland, go  
7 ahead and you can ask Mr. Singh his question.

8 MR. WHEATLAND: May we have the witness sworn,  
9 please.

10 HEARING OFFICER CELLI: Mr. Singh, would you be  
11 sworn, please?

12 (Whereupon the witness was sworn.)

13 MR. SINGH: Yes, I do.

14 MR. PETTY: Please state your name for the  
15 record.

16 MR. SINGH: My actual name is Javinder Singh, I  
17 go by Jass Singh is that okay?

18 HEARING OFFICER CELLI: Please proceed.

19 CROSS-EXAMINATION

20 MR. WHEATLAND: Mr. Singh, would you please state  
21 your academic qualifications if you attended a university  
22 could you please state the university you attended, the  
23 degrees you received, and the date of graduation?

24 MR. SINGH: Yes. I graduated in '87 with my  
25 Bachelor's degree engineering. And then I did my Masters.



1 After masters in '89 and that was again engineering. And  
2 then I done research and development in the top 15  
3 schools.

4 MR. WHEATLAND: You have research and development  
5 in the top --

6 MR. SINGH: 15 schools that is rated 15 in the  
7 world.

8 MR. WHEATLAND: The top 15 school where?

9 MR. SINGH: In the world.

10 MR. WHEATLAND: Where is that?

11 MR. SINGH: It's in India.

12 MR. WHEATLAND: Okay. And would you please state  
13 please your professional background, the types of jobs  
14 that you've had?

15 MR. SINGH: Well, I start my career as a hardware  
16 engineering and then operating systems, and then  
17 enterprises applications, and infrastructure, and data  
18 centers.

19 MR. WHEATLAND: What kind of companies have you  
20 worked for?

21 MR. SINGH: I've worked for companies like Sun  
22 Microsystems.

23 MR. WHEATLAND: Thank you very much. Those were  
24 the only questions that I have.

25 HEARING OFFICER CELLI: Any objection to these

1 exhibits being received into evidence?

2 MR. WHEATLAND: No objection.

3 HEARING OFFICER CELLI: Very good. Exhibits 800,  
4 801 and 803 received into evidence at this time.

5 (Whereupon the above-referenced documents  
6 were admitted into evidence by the  
7 Hearing Officer.)

8 HEARING OFFICER CELLI: We've closed the record  
9 on biology. We are now up to soil and water resources.  
10 Now, let me just see who I have for soil and water.  
11 Matthew Frank, Mark Lindley Paul Marshal. This was an  
12 area where the only people who were interested in  
13 cross-examination were Robert Sarvey and Rob Simpson. So  
14 for soils and water. Do we need to -- Mr. Sarvey, did you  
15 wish toe cross the applicants or the staff or both  
16 witness?

17 MR. SARVEY: No questions for the applicant.  
18 Just the staff.

19 HEARING OFFICER CELLI: Okay. And Mr. Simpson,  
20 did you have any questions for the applicant's witness or  
21 just the staff's or what?

22 MR. SIMPSON: Just staff.

23 HEARING OFFICER CELLI: Just staff. Thank you.  
24 So with that, is there a motion by the applicant?

25 MR. WHEATLAND: Yes. I would like to move our

1 soil and water exhibits by declaration. These are  
2 Exhibits 17, 18, 27, 55, and 63.

3 HEARING OFFICER CELLI: Any objection Mr. Sarvey?

4 MR. SARVEY: No objection.

5 HEARING OFFICER CELLI: Any objection, Mountain  
6 House?

7 MR. GROOVER: None.

8 HEARING OFFICER CELLI: Any objection, Rajesh  
9 Dighe?

10 MR. DIGHE: None.

11 HEARING OFFICER CELLI: Any objection, Mr. Singh?

12 MR. SINGH: None.

13 HEARING OFFICER CELLI: Any objection, Mr.  
14 Simpson?

15 MR. SIMPSON: Nope.

16 HEARING OFFICER CELLI: Exhibits 17, 18, 27, 55  
17 and 63 for identification are received into the record.

18 (Whereupon the above-referenced documents  
19 were admitted into evidence by the  
20 Hearing Officer.)

21 HEARING OFFICER CELLI: At this time we'll have  
22 staff call staff's witnesses and we'll get them sworn.

23 STAFF COUNSEL WILLIS: Mr. Lindley I believe is  
24 on the line.

25 HEARING OFFICER CELLI: Oh, I need to unmute him,

1 I think. Is Mr. Lindley on?

2 MR. LINDLEY: I'm on the line.

3 HEARING OFFICER CELLI: Mr. Lindley, I'm going to  
4 need you to continue to speak so I can find you. What's  
5 your first name? Mr. Lindley, can you speak to us,  
6 please?

7 MR. LINDLEY: Yeah. There seems to be a really  
8 bad echo there.

9 HEARING OFFICER CELLI: It's getting better. Are  
10 you on a cell phone or a speaker phone?

11 MR. LINDLEY: No. I'm on my home phone.

12 HEARING OFFICER CELLI: Are you using the hand  
13 set?

14 MR. LINDLEY: Well, it's a mobile home phone.

15 HEARING OFFICER CELLI: Okay. That's fine. I  
16 just wanted to make sure that you were not using a speaker  
17 phone, that you were actually using a hand set so we would  
18 hear you better.

19 MR. LINDLEY: It's a hand set.

20 HEARING OFFICER CELLI: Let's get you sworn, Mr.  
21 Lindley.

22 (Whereupon the witness was sworn.)

23 MR. LINDLEY: I do.

24 MR. PETTY: Please state your name for the  
25 record.

1 MR. LINDLEY: Mark Lindley.

2 HEARING OFFICER CELLI: Go ahead. Staff.

3 DIRECT EXAMINATION

4 STAFF COUNSEL WILLIS: Good evening, Mr. Lindley,  
5 this is carry Willis. Just wanted to briefly have you  
6 state your qualifications -- I'm sorry. Were your  
7 qualifications attached to your testimony?

8 MR. LINDLEY: Yes, they were.

9 STAFF COUNSEL WILLIS: And did you prepare or  
10 assist in preparing the testimony entitled soil and water  
11 resources in the supplemental staff assessment exhibit  
12 301?

13 MR. LINDLEY: Yes. I worked with our staff  
14 engineering Rachel Cancianne and the CEC Paul Marshal.

15 STAFF COUNSEL WILLIS: Thank you. Do you have  
16 any changes to your testimony tonight?

17 MR. LINDLEY: No, I don't.

18 STAFF COUNSEL WILLIS: And do your opinions  
19 contained in your testimony represent your best  
20 professional judgment?

21 MR. LINDLEY: Yes.

22 STAFF COUNSEL WILLIS: And just to save time,  
23 we'll open this witness up for cross-examination.

24 HEARING OFFICER CELLI: Thank you. Cross by Mr.  
25 Sarvey.

1 CROSS-EXAMINATION

2 MR. SARVEY: Mr. Lindley, page 4.12-24 of your  
3 testimony states that recycled water supplies would not be  
4 economically feasible or environmentally desirable  
5 alternative due to the distance between the potential re  
6 cycled water supplies and the project site. Are you  
7 referring to the Mountain House recycled water with that  
8 statement or the city of Tracy recycled water?

9 MR. LINDLEY: That statement would apply to both?

10 MR. SARVEY: Page 4.12-27 of your testimony  
11 states that the Mountain House wastewater treatment plant  
12 is approximately 5.5 miles away. And that they currently  
13 don't have enough effluent to meet the priority recycled  
14 use rights for the planned Mountain House golf course.  
15 What is the maximum daily amount of water needed to  
16 operate the MEP?

17 MR. LINDLEY: Maximum daily MEP is about -- I  
18 think that called around .483 million gallons per day.

19 MR. SARVEY: Is the .483 million gallons a day of  
20 recycled water from Mountain House treatment plant enough  
21 to supply the MEP at this time?

22 MR. LINDLEY: That could potentially supply MEP.  
23 What's not clear to me on the Mountain House wastewater is  
24 whether or not the .48 million gallons per day if that's  
25 an average monthly. So I'm not sure how much that

1 fluctuates up and down.

2           And another thing, as I understand it, Mountain  
3 House already has the previous commitment to supply a  
4 million gallons a day to a planned golf course.

5           MR. SARVEY: So you're eliminating the use of  
6 recycled water for the Mariposa project based on  
7 assumptions that Mountain House would make the water  
8 available?

9           MR. LINDLEY: No. No. Not at all. What I  
10 understand is with Mountain House, their water is a first  
11 priority for that water is to go to the neighboring golf  
12 course's plant for their community. When you look at the  
13 larger question about whether or not it's economically  
14 feasible, at 5.5 miles and about 35 acre feet per year on  
15 an average, that's a tough economic question.

16           MR. SARVEY: Have you done an analysis whether it  
17 be feasible?

18           MR. LINDLEY: I have not done a detailed analysis  
19 on MEP. I have done detailed analysis on other projects  
20 that are close are to being economically feasible. For  
21 instance, right now I'm working really hard on the Oakley  
22 project. That's got a recycled water plant that's going  
23 in this fall and its's about two and a half miles from the  
24 Oakley site. And at Oakley there's 250 acre feet per  
25 year. So it's considerably greater water supply. And

1 even at two and a half miles, the economics -- I mean the  
2 recycled water is coming out to be double or triple the  
3 cost of using fresh water at Oakley.

4 MR. SARVEY: Are you recommending the use of  
5 recycled water at Oakley?

6 MR. LINDLEY: I'm trying.

7 MR. SARVEY: Thank you.

8 How does the use of fresh water for this project  
9 comply with southwest regional water quality Board  
10 resolution 2009-0011, the recycled water policy?

11 MR. LINDLEY: I believe the recycled water policy  
12 sets out goals to increase the total amount of recycled  
13 water use in the state. It's not clear to me that that  
14 increase -- that goal requires a project to expend an  
15 order of magnitude greater cost on a recycled water  
16 supply.

17 MR. SARVEY: I'll be more specific. The policy  
18 that I quoted said this policy encourages the beneficial  
19 use of recycled water over the disposal of recycled water.  
20 How does using fresh water here comply with that policy?

21 MR. LINDLEY: Well, it's not clear to me that  
22 this policy indicates that a project would need to build a  
23 five or ten or eleven and a half mile long pipeline to  
24 bring relatively small amount of recycled water to a power  
25 plant. And you know, when you look at the pipeline, when



1 I look at -- if I was going to compare say the Oakley  
2 project where I'm at two and a half miles away. I've got  
3 a relatively short distance with no contaminated soils to  
4 bring recycled water to the Oakley plant. I can't make  
5 the economic work on that case to make a slam dunk  
6 argument there. And I don't have to cross railroad  
7 tracks. We don't have to bring it across the Delta  
8 Mendota Canal and other water supply canal, oil pipeline  
9 through contaminated soil across the railroad. So when I  
10 look at the economics of recycled water at Mariposa, it  
11 seems exceedingly challenging. And Mariposa adds  
12 (inaudible) a water conservation off that program which  
13 would off set an equivalent amount of water to what they  
14 would be utilizing in their plant.

15 MR. SARVEY: I'm speaking to Resolution  
16 2009-0011. And I don't see anything in this Resolution  
17 that relates to any economic analysis. Is that your  
18 understanding that there is an economic analysis that goes  
19 with this particular resolution?

20 MR. LINDLEY: I know that in the water code the  
21 actual laws that govern recycled water use and that  
22 encourage recycled water use there is definitely an  
23 economic test.

24 MR. SARVEY: But what about the resolution that  
25 I'm referring to, Resolution 2009-0011. You're not

1 familiar with that one?

2 MR. LINDLEY: I'm familiar with it to a certain  
3 extent. I don't have the fine print in front of me.

4 MR. SARVEY: Okay. This is going to be pretty  
5 difficult, Mr. Celli. I had an exhibits I wanted to  
6 question this witness on. He's not here. So I don't know  
7 how I'm going the do that.

8 HEARING OFFICER CELLI: What is the exhibit?

9 MR. SARVEY: It's Exhibit 41. It's water  
10 resources. What it consists of is a table from the  
11 applicant's AFC water usage by facility, includes  
12 Mariposa, East Altamont, Midway, GWF, Mountain House,  
13 Tracy Hills, and then the other part of the exhibit is the  
14 soils and water table 9 from the East Altamont Energy  
15 Center which actually gives a average historic demands  
16 from BBID's usage from the years of 1989 to 2000.

17 HEARING OFFICER CELLI: So you got this from the  
18 AFC, this table?

19 MR. SARVEY: The Table 5.15-2 is from the AFC.  
20 The soils and water table 9 is from the East Altamont  
21 energy center FSA. And my question related to the  
22 exhibit -- this is very difficult. Exhibit 301, page 4.  
23 12-17 states BBID confirmed they will have the ability and  
24 can meet the MEP facility demand. Have you confirmed  
25 BBID's ability to deliver the water with the water supply

1 assessment.

2 MR. LINDLEY: What was your question?

3 MR. SARVEY: Your testimony on page 4.12-17  
4 states BBID confirmed they have the ability and can meet  
5 MEP facility demand. Have you confirmed BBID's ability to  
6 deliver the water with a water supply assessment?

7 MR. LINDLEY: I have checked with BBID? I've  
8 discussed it with them. They have a pre-1914 water right  
9 for I believe over 50,000 acre feet per year. I did check  
10 their reported water use on the State Board's website and  
11 from what I could tell in the last few years they've been  
12 diverting on the order of 40 to 45,000 acre feet per year.  
13 So it appeared to me the capacity when I did my own check  
14 as well as discussing it with their managers, Rick  
15 Gilmore.

16 MR. SARVEY: Isn't it true they only have a  
17 50,000 acre feet per year allotment from --

18 MR. LINDLEY: Yeah. I believe that's what I  
19 said.

20 MR. SARVEY: I thought you said 60

21 MR. LINDLEY: About 50,000. I'm not sure. Might  
22 be 50,000, or so.

23 MR. SARVEY: Could you repeat what the current  
24 use is that you've got from the website there? I'm sorry  
25 I didn't right that down?

1           MR. LINDLEY: You know -- I don't know exactly  
2 what it was, but I know it was in the range of around 40  
3 to 45,000 acre feet per year. And I got that when I was  
4 up late working on the staff assessment and checking  
5 things. And I believe it was either State Board as  
6 website or it was a website where diverters report their  
7 water use to the delta water manager like DWR.

8           MR. SARVEY: So assuming they have 45,000 acre  
9 feet that they're already using, that leaves them 5,000  
10 left over; is that correct?

11          MR. LINDLEY: Yeah.

12          MR. SARVEY: Did you take into consideration that  
13 BBID has a contract with Tracy Hills for 3,008 acre feet  
14 per year?

15          MR. LINDLEY: I did not -- beyond checking with  
16 BBID and confirming it with them and then doing a spot  
17 check with the reference they supplied to DWR, I didn't do  
18 a full -- I didn't break down BBID's water supply to 40  
19 acre feet per year, 35 acre feet per year here.

20          MR. SARVEY: Have you seen Table 5.15-2 in the  
21 AFC?

22          MR. LINDLEY: Okay. If you bear with me, I can  
23 probably find 2. Yeah, I'm looking at it right now.

24          MR. SARVEY: And you see that Mountain House also  
25 has an agreement with them for 9,415 acre feet a year?

1 MR. LINDLEY: I see that.

2 MR. SARVEY: Do you know what they're currently  
3 using?

4 MR. LINDLEY: That, I do not know. But I know  
5 the 9,415 is their full build out scenario.

6 MR. SARVEY: Okay. So when start adding these  
7 numbers up, 45,000, 3,009, 418 does that come to over  
8 50,000 acre feet a year?

9 MR. LINDLEY: I would suppose it would.

10 MR. SARVEY: Okay. Thank you.

11 HEARING OFFICER CELLI: Anything further, Mr.  
12 Sarvey?

13 MR. LINDLEY: Bob, can we back up again and can  
14 you read off the numbers that you were just asking me to  
15 add up again?

16 MR. SARVEY: I'm satisfied with your answer, and  
17 thank you, mark.

18 MR. LINDLEY: Okay.

19 MR. SARVEY: Land 2, the project owner shall  
20 provide year round water supply for grazing livestock on  
21 their main 146 acres of the property life. How much water  
22 supply will be needed for that additional grazing?

23 MR. LINDLEY: I'm not sure.

24 MR. SARVEY: Do you have any idea where it's  
25 coming from?

1           MR. LINDLEY: I would assume it would be coming  
2 from the same place that the water currently comes from  
3 for grazing.

4           MR. SARVEY: And as far as the landscaping plan,  
5 do you have any ideas how much water will be needed for  
6 that plan?

7           MR. LINDLEY: No, I do not. I have not reviewed  
8 the landscaping plan.

9           MR. SARVEY: Couldn't the recycled water that's  
10 going to be used for dust repression during  
11 construction -- I mean the fresh water, couldn't that be  
12 recycled water since you're trucking that water in any  
13 way? Couldn't you just truck recycled water in for dust  
14 suppression?

15          MR. LINDLEY: I suppose you could.

16          MR. SARVEY: Okay. On page 4.12-23 of your  
17 testimony, it states that

18          MR. BOYCE: I different claims is making  
19 improvements to its operation to reduce seepage,  
20 evaporation, operational spills. Since BBID has an  
21 existing water conservation program and fee shouldn't  
22 another water provider or user be the recipient of the  
23 water conservation funds to comply with CEQA and other  
24 water quality LORS?

25          MR. LINDLEY: What is your question? I'm sorry.

1           MR. SARVEY: I'll start over. 4.1-23 of your  
2 testimony states that BBID claims it is making  
3 improvements to its operation to reduce seepage,  
4 evaporation, and operational spills. BBID plans to  
5 establish a water rate that includes pore portion national  
6 water conservation fee. Since BBID already has an  
7 existing water conservation program and plans a fee,  
8 shouldn't another water provider or user be the recipient  
9 of the water conservation funds to comply with CEQA and  
10 other water quality LORS?

11           MR. LINDLEY: Are you saying should or shouldn't?

12           MR. SARVEY: Should.

13           MR. LINDLEY: Shouldn't other --

14           MR. SARVEY: They already have an existing plan.  
15 What's the purpose of providing another plan? How does  
16 that comply with CEQA if they already have an existing  
17 plan?

18           MR. LINDLEY: Well, A, the water conservation  
19 program is a voluntary measure that the applicant has  
20 provided. B, what we're looking for is something that's  
21 beyond what BBID already has in place. When we talk about  
22 a water conservation plan, what we're asking the applicant  
23 and BBID to do is to identify specific projects that the  
24 applicant could contribute funding towards and then  
25 identify the amount of water conservation that you would

1 release to specific projects. Divy that out to develop a  
2 possible acre foot and then MEP would be able to  
3 contribute to actually realize the one-to-one water  
4 conservation offset. It wasn't clear to us in our  
5 discussion with BBID whether or not their existing water  
6 rate that included a proportionate water conservation fee  
7 would actually result in a one-to-one offset. And that's  
8 what we tried to memorialize in our conditions.

9 MR. SARVEY: The ECAP also have several policies  
10 which require the maximum amount of water conservation  
11 feasible. It doesn't appear that the water conservation  
12 program provides any additional water savings above what  
13 is already required. How does that comply with CEQA,  
14 resolution 7558 and ECAP policies 251, 257 and 259?

15 MR. LINDLEY: As far as 7558 goes, the project  
16 already has dry cooling. They have the zero liquid  
17 discharge to meet the 2003 IEPR policy. And the water  
18 conservation program is -- in an essence icing on the  
19 cake. It's not that fairly directly required by 7558 or  
20 the 2003 IEPR. But it does go a long way towards meeting  
21 the basic needs and the goals that the state has set out  
22 in the last couple of years regarding the delta water  
23 supply.

24 MR. SARVEY: Page 4.12-7 of your testimony shows  
25 that 130 acre feet of the 187 acre feet a year of water



1 for this project is used for controlling NOx. So by  
2 installing dry low NOx combustors for NOx control, the  
3 project can reduce water consumption by 66 percent.  
4 Wouldn't this be required by the 2003 IEPR and resolution  
5 7558?

6 MR. LINDLEY: You know, the applicant did not  
7 propose to use a low NOx turbine. And given that they've  
8 got the water conservation plan in place and we did not  
9 find it a significant impact, there was no mechanisms for  
10 us to provide a counter proposal for the applicant. I'm  
11 not -- I'm not an expert on combustion turbines and the  
12 pros and cons of different models and I can't say that  
13 from -- I can't tell the applicant that he needs to go  
14 with his one turbine versus another unless I've got a  
15 pretty significant impact.

16 MR. SARVEY: What is the soil quality of the site  
17 for agricultural purposes?

18 MR. LINDLEY: I believe the site is currently  
19 used for grazing.

20 MR. SARVEY: So if the land was irrigated, would  
21 the soil be suitable for intensive farming?

22 MR. LINDLEY: I'd have to double back on that and  
23 check on that. Would you give me a moment, please?

24 MR. SARVEY: Not a problem.

25 HEARING OFFICER CELLI: How many more questions,

1 Mr. Sarvey? Let the record reflect that Mr. Sarvey put up  
2 one finger. Are you ready to respond?

3 MR. LINDLEY: I'm not showing that the site is  
4 slated as prime farm land in our analysis.

5 HEARING OFFICER CELLI: We already have that in  
6 the record, Mr. Sarvey. It's's -- a lot of people have  
7 testified this isn't prime farm land. Land use I think is  
8 the word that came out.

9 MR. SARVEY: Well, soils and water is the place  
10 to ask, I think. So I asked.

11 How does the project comply with ECAP policy 273?

12 MR. LINDLEY: Could you familiarize me with ECAP  
13 policy?

14 MR. SARVEY: ECAP policy 273 says the county  
15 shall support zone 7's policy which discourages commercial  
16 and industrial development using septic tanks.

17 MR. LINDLEY: I am not sure. I would have to  
18 look into that more.

19 MR. SARVEY: Thank you.

20 HEARING OFFICER CELLI: Thank you, Mr. Sarvey.  
21 One moment.

22 Mountain House, any questions with regard to soil  
23 and water resources?

24 MR. GROOVER: Yes, quickly.

25 Mark, do you have any technical expertise in

1 obtaining present mitts, NPDES for the discharge of  
2 recycled water?

3 MR. LINDLEY: I have not obtained an NPDES permit  
4 for the discharge of recycled water.

5 MR. LAMB: -- This is Jim Lamb with Mountain  
6 House Community Services District.

7 You mentioned earlier that your analysis of  
8 supplying reclaimed water from Mountain House for Tracy  
9 was predominantly an economic question. If economics  
10 aside from strictly an environmental point of view, would  
11 you consider it a benefit to use the reclaimed water and  
12 I'll put that into the context. There might become a  
13 point in the future where Mountain House has the  
14 opportunity to sell reclaimed water to the east Altamont  
15 project. And that would probably make it feasible at some  
16 point in the future we could supply reclaimed water to  
17 Mariposa. So environmental impacts or economic impacts  
18 aside, is there any environmental reasons why that  
19 shouldn't be considered?

20 MR. LINDLEY: Generally, we always encourage  
21 recycled water where it's available. Where it's  
22 economically feasible. And from what I've seen working  
23 with other energy staff like Paul Marshal my technical  
24 senior there, we use recycled water and make the argument  
25 not even the argument on a one to one basis as far as

1 costs go. So environmentally speaking, we would always  
2 encourage recycled water. And if there was a way to  
3 combine a pipeline that's going to east Altamont to get it  
4 part way towards Mariposa, I can't see any objections  
5 towards taking it all the way to Mariposa and trying to  
6 encourage Mariposa to use recycled water too in the  
7 future.

8 MR. LAMB: Thank you.

9 HEARING OFFICER CELLI: Mr. Dighe, any questions  
10 on soil and water?

11 MR. DIGHE: None.

12 HEARING OFFICER CELLI: Thank you.

13 Mr. Singh, any questions on soil and water?

14 MR. SINGH: Economic analysis, what are the  
15 factors do you consider that recycled water from Mountain  
16 House cannot be used? What was your economic model that  
17 you testify?

18 MR. LINDLEY: Well, as I was discussing with Mr.  
19 Sarvey, I didn't do a direct economic analysis on this  
20 particular project. Based on the 5.5 mile distance, the  
21 fact they were going to have to cross two major water  
22 supply canals, a railroad, and going through potentially  
23 contaminated soils due to an old Chevron pipeline, we  
24 concluded that recycled water wouldn't be economically  
25 feasible.

1           Another project where it's closer when we looked  
2 at recycled water and it seems like it could be that we  
3 would have a good economic argument. What we look at is  
4 the cost of a pump station, the cost of building a  
5 pipeline. There could be additional treatment costs at  
6 the power plant. It could be additional wastewater  
7 treatment cost at the power plant depending on how the  
8 water treatment and wastewater treatment works out. There  
9 would be engineering, permitting on top of that. And then  
10 there as some maintenance costs. And you know for  
11 planning level costs analyses, usually we'll use unit cost  
12 for the pipeline. And the pump station and then the  
13 engineering and permitting costs are usually scaled off  
14 that as a percentage somewhere in the 20 to 30 percent  
15 range.

16           MR. SINGH: So basically what you have done is  
17 the direct impact analysis of the profit of the applicant.  
18 That's how you tried your economic model.

19           STAFF COUNSEL WILLIS: Mr. Celli, with all due  
20 respect to Mr. Singh, he didn't request any time for  
21 questioning during the prehearing conference on this  
22 statement.

23           HEARING OFFICER CELLI: He actually mentioned  
24 that he was going to ask -- put in some evidence. So  
25 overruled. Just how many questions do you have Mr. Singh?

1 MR. SINGH: May be one or two.

2 HEARING OFFICER CELLI: Please, go ahead and ask  
3 your question.

4 MR. SINGH: So is it true basically you looked  
5 into the applicant profit ability that the profit ability  
6 will go down and it will not make a feasible to draw a  
7 line up to may be two miles from Mountain House?

8 MR. LINDLEY: I wouldn't say it in those words.  
9 How I would say -- like for my Oakley project where  
10 they're very close and they use a lot of water, about 240  
11 acre feet, there six times more than what we're looking at  
12 here --

13 MR. SINGH: I asked profit ability. I don't want  
14 explanation.

15 HEARING OFFICER CELLI: Sir, he needs to be able  
16 to answer the question. So let's let him finish the  
17 question and ask the next one.

18 MR. LINDLEY: What we're trying to do is work up  
19 an economic analysis and provide a comparison between the  
20 costs to go with the fresh water supply versus the costs  
21 to be to a recycled water supply. And often times we'll  
22 break that down on a cost per megawatt hour. If the costs  
23 are close enough that the project could still be viable,  
24 then we'll take that to the Energy Commission and allow  
25 the Commissioners to make a decision.

1           MR. SINGH: So basically cost per megawatt is  
2 driving the profitability to MEP, right? The cost is high  
3 less profitability?

4           MR. LINDLEY: That's certainly one of the cost  
5 driver that any power plant -- the cost water is  
6 definitely part of their cost structure.

7           MR. SINGH: So were you paid by MEP to do this  
8 analysis?

9           MR. LINDLEY: Pardon me?

10          MR. SINGH: Were you paid by MEP to do the  
11 analysis?

12          MR. LINDLEY: No. I'm not paid by MEP for  
13 anything.

14          MR. SINGH: Who paid for doing this analysis?

15          MR. LINDLEY: I work for the Energy Commission.

16          MR. SINGH: Okay. Thank you very much

17          HEARING OFFICER CELLI: Thank you Mr. Singh.

18          Mr. Simpson, any questions of this witness? Mr.  
19 Simpson, are you may be on mute.

20          MR. SIMPSON: I'm here.

21          HEARING OFFICER CELLI: Okay. Any questions  
22 regarding soil and water?

23          MR. SIMPSON: Yes. Can you hear me okay?

24          HEARING OFFICER CELLI: Yes. Please go ahead.

25          MR. SIMPSON: Good. So in your review, did you

1 review a soils report or conduct a soils report?

2 MR. LINDLEY: The applicant did the soils work.

3 MR. SIMPSON: (inaudible) soil on the property.

4 Do you help to understand what this (inaudible) soil form  
5 is compared to what this soil type is?

6 MR. LINDLEY: Well, prime farm land has greater  
7 fertility and greater agricultural value. As far as this  
8 land here is pasture land.

9 MR. SIMPSON: I understand the current use is  
10 pasture land, but the higher value farm land is a  
11 different type of soil or how is it different than this  
12 parcel?

13 MR. LINDLEY: You know, I'm not an expert --

14 STAFF COUNSEL WILLIS: I have an object to  
15 questions regarding farm land and prime farm land. That  
16 was handled during the land use section.

17 HEARING OFFICER CELLI: Sustained. Go ahead, Mr.  
18 Simpson.

19 MR. SIMPSON: Thank you. This other water source  
20 was not available would the project be viable using the  
21 recycled water that's been discussed?

22 MR. LINDLEY: I'm not sure.

23 MR. SIMPSON: I'm sorry. What was your response?

24 MR. LINDLEY: I'm not sure there will be  
25 economic --



1 MR. SIMPSON: I see. Those are my questions.

2 HEARING OFFICER CELLI: Thank you, Mr. Simpson.

3 Any redirect by staff? There was no cross by  
4 applicant.

5 MR. WHEATLAND: No cross.

6 STAFF COUNSEL WILLIS: No redirect.

7 HEARING OFFICER CELLI: Thank you, Mr. Lindley,  
8 for hanging out with us so late.

9 STAFF COUNSEL WILLIS: Thank you, Mark.

10 HEARING OFFICER CELLI: You are excused as a  
11 witness.

12 MR. LINDLEY: Thank you.

13 HEARING OFFICER CELLI: Now then, none of the  
14 other parties have witnesses for soil and water; is that a  
15 correct statement? Mr. Sarvey is yes and Mr. Dighe is  
16 nodding. And I know there's no witnesses Mr. Mountain  
17 House. Mr. Singh has no witnesses.

18 So with that, is there any motion with regard to  
19 any other exhibits for soil and water from the applicant?  
20 Did we get all your soil and water? Mr. Sarvey, did I get  
21 all your soil and water exhibits?

22 MR. SARVEY: Yes, you did.

23 HEARING OFFICER CELLI: There were none from any  
24 of the other parties. And I got it all from staff. So  
25 with that, soil and water is now closed. That takes us

1 to -- now is visual resources off the table, Mr. Sarvey?

2 MR. SARVEY: Yes, it is.

3 HEARING OFFICER CELLI: Thank you. We are down  
4 to worker safety and fire protection. Before we get to  
5 that, let's take a ten minute break. It's 10:23. Let's  
6 see if we can get back to work at 10:35 and we'll be  
7 taking on work are safety and fire protection.

8 (Off record.)

9 HEARING OFFICER CELLI: We're back on the record.  
10 And so Mr. Sarvey, last said that visual resources is no  
11 longer an issue; is that correct?

12 MR. WHEATLAND: I'd like to give the Committee a  
13 brief update on that issue.

14 HEARING OFFICER CELLI: Please.

15 MR. WHEATLAND: The Committee directed the  
16 applicant to talk with Tracy Fire to see if we could get  
17 this issue off the record as the Committee knows,  
18 wastewater in the service of the Alameda County Fire  
19 Department. But the Tracy Fire might be called upon to  
20 provide mutual aid. We asked Tracy Fire if they had a  
21 proposal for us that would resolve this issue without  
22 having to go to hearings. And on February 24th in an  
23 e-mail at 12:31 p.m., we received a proposal from Tracy  
24 Fire which would resolve the issue and avoid the need for  
25 hearings.

1           The following morning, in an e-mail at 8:19 a.m.,  
2 we accepted Tracy Fire's proposal. We agreed to what they  
3 requested of us which amounted to making a one time  
4 payment or contribution to Tracy Fire for \$70,000. And we  
5 informed Mr. Sarvey that we had reached agreement with  
6 Tracy Fire.

7           Originally, we were intending to have a written  
8 agreement with Tracy Fire. Mr. Sarvey asked that we would  
9 prepare a proposed worker safety condition of  
10 certification that would commensurate our agreement. And  
11 I've distributed a copy to the Committee and also a copy  
12 to all of the parties. So the applicant believes it has  
13 an agreement with Tracy Fire that removes this issue from  
14 needing the half hearings and the applicant would propose  
15 to you the worker safety condition that we distributed.

16           HEARING OFFICER CELLI: Thank you, Mr. Wheatland.

17           Is that your understanding Mr. Sarvey?

18           MR. SARVEY: It's my understanding. But I still  
19 have not seen a response from Chief Brammel. Do you have  
20 that, Mr. Wheatland? I haven't seen that.

21           MR. WHEATLAND: No, we have not received any  
22 further communication from Chief Brammel once we had sent  
23 to him our e-mail accepting his proposal.

24           HEARING OFFICER CELLI: So we have offer and  
25 acceptance equals a contract.

1           MR. TYLER: That's probably as close as we're  
2 going to get.

3           MR. SARVEY: I'm a little reluctant because we  
4 had this agreement at the evidentiary hearing and it fell  
5 apart, pretty much an identical agreement

6           HEARING OFFICER CELLI: In Mariposa, you mean?

7           MR. SARVEY: At the other hearing we had on the  
8 25th. That's my reluctance. But I'm going to defer this  
9 to the Mountain House community since it impacts them. So  
10 if they're satisfied with it, I'm satisfied with it.

11          HEARING OFFICER CELLI: Thank you, Mr. Sarvey.

12          Let's hear from Mountain House community  
13 services.

14          MR. LAMB: It's pretty simple. Tracy rural fire  
15 that is hair own Board of directors. So we aren't at  
16 liberty to speak for them. We were able to seek this  
17 (inaudible) but it's not up to us to accept or not. So if  
18 the Commission set aside with the correspondence, then  
19 we're satisfied with that.

20          HEARING OFFICER CELLI: Thank you. One question  
21 before I go around. Did we designate an exhibits number?  
22 I have a letters -- really, these e-mails from Chris Curry  
23 to David Brammell and then I have the worker safety  
24 proposed condition. I would work them as a single  
25 exhibit.

1 MR. WHEATLAND: Exhibit 72, please.

2 HEARING OFFICER CELLI: Exhibit 72. Is there  
3 any -- do you have any work are safety was between the  
4 applicant, staff, and Mr. Sarvey. None of the other  
5 parties had questions with regard to fire safety. Staff,  
6 is this acceptable to you?

7 STAFF COUNSEL WILLIS: It is.

8 HEARING OFFICER CELLI: Is there any objection to  
9 the receipt of Exhibit 72 into the record, Mr. Sarvey?

10 MR. SARVEY: No objection.

11 HEARING OFFICER CELLI: Mountain House?

12 MR. GROOVER: None.

13 HEARING OFFICER CELLI: Mr. Dighe?

14 MR. DIGHE: None.

15 HEARING OFFICER CELLI: Mr. Singh?

16 MR. SINGH: None.

17 HEARING OFFICER CELLI: Mr. Simpson? Are you  
18 still with us on the phone? Any objection? He's left us.  
19 Mr. Simpson is no longer on the phone.

20 MR. SARVEY: I still need to move my worker  
21 safety fire protection testimony into the record.

22 HEARING OFFICER CELLI: Right. That is right.  
23 So don't let me forget that. So Exhibit 72 is received.

24 (Whereupon the above-referenced document  
25 was admitted into evidence by the

1           Hearing Officer.)

2           HEARING OFFICER CELLI: And we now have all of  
3 the exhibits for applicant on all topics, including  
4 visual?

5           MR. WHEATLAND: You do. I have one minor cleanup  
6 matter that I'd like to raise with you, if I may.

7           HEARING OFFICER CELLI: Please.

8           MR. WHEATLAND: You received testimony earlier in  
9 this proceeding regarding the FAA's finding of no hazard  
10 determination. And we provided copies of those findings  
11 in Exhibit Number 7. Those are is it forth in Exhibit 7  
12 at request 51-1. Those findings of no hazard  
13 determination were scheduled to expire. So the applicant  
14 had applied to the FAA for an extension of the finding of  
15 no hazard determination so there would be a finding in  
16 effect through the construction of this project. We  
17 received just last Friday the FAA's extension of the  
18 finding of no hazard determination with an expiration now  
19 of September 4th, 2012. I would like to ask the Committee  
20 to reserve an exhibit number, which would be Exhibit 73  
21 and we will provide the Committee and the parties a full  
22 copy of the findings of no hazard by the FAA extending  
23 that to September 4th of 2012.

24           HEARING OFFICER CELLI: So Exhibit 73 is the  
25 FAA's renewed findings of no hazard.

1           MR. WHEATLAND: Should we move for the admission  
2 of that at this time or wait until it's distributed to the  
3 parties?

4           HEARING OFFICER CELLI: That's the minority  
5 population. Any objection, Mr. Sarvey?

6           MR. SARVEY: Yes, I object.

7           HEARING OFFICER CELLI: Any objection from  
8 Mountain House?

9           MR. GROOVER: None.

10          HEARING OFFICER CELLI: Any objection from Mr.  
11 Dighe?

12          MR. DIGHE: None.

13          HEARING OFFICER CELLI: Any objection from Mr.  
14 Singh?

15          MR. SINGH: Yes, I object.

16          HEARING OFFICER CELLI: And Mr. Simpson is no  
17 longer with us.

18          PUBLIC ADVISOR JENNINGS: Excuse me, Hearing  
19 Officer Celli. I just heard from Mr. Simpson. He got dis  
20 connected. He's trying to call back in.

21          MR. SARVEY: The basis of the objection and it's  
22 going to bring me to another exhibit that we have the --

23          MR. SIMPSON: Hello.

24          HEARING OFFICER CELLI: Hello. Is this Rob  
25 Simpson?

1 MR. SIMPSON: Yes, sir.

2 HEARING OFFICER CELLI: Was there any objection  
3 to Exhibit 73?

4 MR. SIMPSON: I was hearing Bob Sarvey's  
5 objection. I don't have an objection because I didn't  
6 hear what happened before that. And I lost what was  
7 happening to visual resources.

8 HEARING OFFICER CELLI: So visual resources is a  
9 closed topic now. We haven't received Mr. Sarvey's  
10 exhibits on visual resources. But that's no longer in  
11 dispute.

12 MR. SIMPSON: I don't understand. I had  
13 questions on visual are sources and I wasn't asked or  
14 offered the opportunity. You asked Mr. Sarvey if it was  
15 off the table. He agreed it was and then you moved on.

16 STAFF COUNSEL WILLIS: Visual resources is  
17 actually brought up the first thing this morning during  
18 the very beginning of the hearing prior to testimony. And  
19 I asked if my witnesses could be excused and you agreed.

20 HEARING OFFICER CELLI: That's right. The  
21 witnesses were excused based upon representations to the  
22 Committee that visual resources were no longer in dispute.

23 MR. SIMPSON: Thank you.

24 HEARING OFFICER CELLI: Thank you.

25 So now Mr. Sarvey, you have an objection to



1 Exhibit 73. Your objection is?

2 MR. SARVEY: One, it's incomplete. Two, it's not  
3 timely. And I haven't reviewed it.

4 MR. WHEATLAND: Well, it is timely in that we  
5 only Red it last Friday is when we received it from the  
6 FAA. And it will be complete because we will provide a  
7 complete copy of each of the determine nations by the FAA  
8 that we received last Friday.

9 HEARING OFFICER CELLI: When you say it's  
10 incomplete, what's missing?

11 MR. WHEATLAND: Well, nothing is missing. We --  
12 I have here the first page of each of the determinations.  
13 But in fairness to the parties, I wanted to provide a copy  
14 to each determinations. So we'll need to provide that to  
15 them after today as hearing.

16 MR. SARVEY: This had no verification. It came  
17 from the FAA.

18 HEARING OFFICER CELLI: Is it self-authenticating  
19 Mr. Wheatland

20 MR. SARVEY: I haven't seen it.

21 MR. WHEATLAND: I'm distributing to the parties  
22 just the first page of each of the determination.

23 HEARING OFFICER CELLI: Did you have any other  
24 objection, Mr. Singh besides what was voiced by Mr.  
25 Sarvey?

1 MR. SINGH: It's the same as Sarvey.

2 HEARING OFFICER CELLI: Okay.

3 MR. SIMPSON: I'm sorry. Can I understand the  
4 basis why the first page (inaudible)

5 HEARING OFFICER CELLI: Mr. Simpson, Exhibit 73  
6 is actually several pages here.

7 MR. WHEATLAND: There are eight separate  
8 determinations. I was trying to save paper by only  
9 re-producing the first page of five pages for each of the  
10 determine nations. But in the interest of giving the  
11 parties all the information, we will prepare and  
12 distribute the complete copy of each of the determine  
13 nations.

14 MR. SIMPSON: It seems like the extra 20 copies  
15 could have been before the hearing. So I would object to  
16 introducing one page of this and holding the rest until  
17 the proceeding is closed.

18 HEARING OFFICER CELLI: Okay. Thank you. We  
19 whether provisionally receive Exhibit 73 in the record  
20 pending the fulfillment of the condition that the  
21 applicant serve the entire Exhibit 73 on all of the  
22 parties on the POS and then --

23 MR. SARVEY: When will our opportunity to  
24 cross-examine on this exhibit be?

25 HEARING OFFICER CELLI: Well, this is just a

1 renew all I take it of the existing findings.

2 MR. WHEATLAND: That's right. It's just a  
3 renewal of the existing determination that was made by the  
4 FAA.

5 HEARING OFFICER CELLI: And that's the only  
6 reason that it's being accepted late, Mr. Sarvey, because  
7 the determination was just made on Friday. It as just  
8 a -- as I understand it, an undertaking of the existing.  
9 There is no changing to the -- no new information.

10 MR. WHEATLAND: No changes. That's correct.

11 MR. SARVEY: That leads me to another exhibit,  
12 Mr. Celli. The applicant has (inaudible) rebuttal exhibit  
13 last use he was going the supply us with all the pages on  
14 and I would move to strike that exhibit. I've never  
15 received that full exhibit. And perhaps Mr. Wheatland has  
16 the particular exhibit number.

17 HEARING OFFICER CELLI: Let me make one thing  
18 clear. Exhibit 73 is received based upon the  
19 representations that the parties will get all of the rest  
20 of Exhibits 73.

21 Now, I haven't received all of your

22 Will Sarvey, I haven't received your visual.  
23 What's outstanding right now for you Mr. Sarvey in terms  
24 of exhibits?

25 MR. SARVEY: Well, my understanding is we haven't

1 received Exhibit 407. And I believe that's the only one  
2 that we have left outstanding.

3 HEARING OFFICER CELLI: So my understanding was  
4 that we were receiving 400 through 415, 415 being the last  
5 exhibit marked for identification, the article from  
6 condition San Francisco chronicle. So if we haven't done  
7 that already, Exhibits 400 through 415 are admitted into  
8 the record.

9 (Whereupon, the above-referenced documents  
10 were received into evidence by the  
11 Hearing Officer.)

12 HEARING OFFICER CELLI: And that takes care of  
13 all of yours; is that correct?

14 MR. SARVEY: 421 I'm not sure that we need as an  
15 exhibit --

16 HEARING OFFICER CELLI: 421 --

17 MR. SARVEY: We have the AFC table in evidence  
18 and we have the testimony of Mr. Lidy. I'm not sure we  
19 need 421 in.

20 HEARING OFFICER CELLI: I agree. Okay. Then  
21 that would conclude all the testimony of visual. And fire  
22 and safety. And I have everybody's exhibits from all  
23 parties at this time; correct?

24 Now, the regard is now closed in Mariposa on all  
25 topic areas. I want to just talk about opening and

1 rebuttal briefs.

2 Mr. Sarvey, you have a question?

3 MR. SARVEY: I still have that one exhibit that  
4 we provisionally accepted. And I'm objecting to it. I  
5 also want to let you know that we have the contacted and  
6 Alameda County Department and there really is no way to  
7 say that the 1,000 acre solar farm and the 100 acre solar  
8 farm that was referenced in Mr. Schneider's testimony is  
9 reasonably foreseeable. So we're withdrawing our --

10 HEARING OFFICER CELLI: That's right. I was  
11 reading the transcript Sunday and I had forgotten about  
12 that and made a note to myself to ask about that. But you  
13 had mentioned that there was an exhibit that you were  
14 expecting from the applicant.

15 MR. SARVEY: Yes. He has an exhibit that he was  
16 going to provide us a copy. We've never received it. So  
17 at this point, every thing is closed. I would object to  
18 the exhibit.

19 HEARING OFFICER CELLI: What exhibit was that?

20 MR. WHEATLAND: This was the conditional use  
21 permit. The Committee may recall the copy we provided was  
22 marked as a draft. We've requested from Alameda County a  
23 certified copy of the version that was actually adopted by  
24 the County Board of Supervisors. We believe that this  
25 document will be identical. But as of today, we still

1 have not Red a certified copy from the county.

2 HEARING OFFICER CELLI: Okay. So it would make  
3 sense to essentially substitute the certified copy for  
4 whatever the copy was that you put into evidence  
5 originally. If it's going to be identical.

6 MR. WHEATLAND: With expect it to be identical.

7 HEARING OFFICER CELLI: So with that, then the  
8 order of the Committee would be that the applicant will  
9 provide to all of the parties the is iter finalized copy  
10 of exhibit -- what exhibit number was that?

11 MR. WHEATLAND: 69.

12 HEARING OFFICER CELLI: Exhibit 69, certified  
13 copy.

14 MR. SARVEY: So that objection is overruled?

15 HEARING OFFICER CELLI: You're objecting to --  
16 what's the basis for your objection?

17 MR. SARVEY: Well, number one had haven't  
18 provided us a complete copy. I would like to see a  
19 complete copy -- there may be something in that document  
20 that he didn't want us to see. As far as I'm concerned,  
21 we never got an opportunity to even show it to my land use  
22 witness or anyone else. So I don't see any evidentiary  
23 value. We were unable to cross-examine on a complete copy  
24 of it. It wasn't timely. Will in his possession which we  
25 had made that objection earlier.

1 HEARING OFFICER CELLI: Are you saying that you  
2 never received the original?

3 MR. SARVEY: No. We have not received a complete  
4 copy of 69 to this date.

5 MR. WHEATLAND: We provided a draft copy. That  
6 was the copy that was provided to the Committee and the  
7 parties. We offered to provide a certified copy of the  
8 version that would have the word draft removed.

9 HEARING OFFICER CELLI: 69 is received into  
10 evidence with page 335 of the transcript. It was already  
11 received.

12 MR. SARVEY: Right. But --

13 HEARING OFFICER CELLI: So what we're proposing  
14 to do is have a certified copy of that same document  
15 supplied to all of the parties. And so it's the same  
16 documents, just a certified copy.

17 MR. SARVEY: Right. Well, my objection was at  
18 the hearing you clarified it wasn't a complete copy. You  
19 didn't say anything about a certified copy. He said a  
20 complete copy. So at this point, we have not seen a  
21 complete draft. So I would say I would move to strike it.

22 HEARING OFFICER CELLI: Okay. Your objection is  
23 noted. We're going allow 69 to be supplanted with a  
24 certified copy and order that the applicant serve all of  
25 the parties with the certified copy of exhibit 69.

1           Mr. Sarvey -- and all of the parties will have  
2 the opportunity to raise any problems, objections, et  
3 cetera, regarding exhibit 69 if they may arise in your  
4 briefs, which is a perfect segue to my next discussion,  
5 which is briefs.

6           Opening briefs -- we believe that the issues are  
7 fairly obvious in this case, because they are those issues  
8 that all of the parties were raising, such as things like  
9 ECAP, diminution of property values. We're going to ask  
10 that the parties let us know whether diminution of  
11 property values is even a CEQA concern and how it applies  
12 to this project. Opening briefs will be due ten days of  
13 the transcript of the last days of hearings which is today  
14 is published and rebuttal briefs will be due seven days  
15 after the opening briefs. So what's going to happen is  
16 this. When the hearing advisor's office receives the  
17 transcripts, what we will do is print out a notice of  
18 availability. And as soon as you receive -- what that  
19 notice of availability goes out, opening briefs will be  
20 due ten days later.

21           When the parties receive their opening briefs,  
22 they will have seven days to rebut the opening briefs.  
23 Briefs are limited to 20 pages or less. 12 point font,  
24 single spas. The parties should also provide an  
25 electronic copy of the opening briefs and rebuttal briefs



1 to the hearing advisor via e-mail in micro soft word  
2 format if you please. That would be a great help to us.  
3 Any question about briefs?

4 MR. SARVEY: Is there any way you would consider  
5 two weeks from the transcript? That would be quite  
6 helpful to me.

7 HEARING OFFICER CELLI: Okay. So two weeks. Is  
8 that acceptable to all the parties?

9 MR. SINGH: I would like to have three weeks  
10 actually because we are not an expert. We need more time  
11 to go through. This is the first time we are going  
12 through.

13 HEARING OFFICER CELLI: I would love to give  
14 three weeks. I'll tell you what. I think two weeks is  
15 going to be more than adequate. If we give two weeks --

16 MR. SINGH: Additional reason is I'll be  
17 traveling you know. So I'll have very less time to go  
18 through this.

19 HEARING OFFICER CELLI: Well, these will be  
20 available online, I believe. There is nobody from my  
21 office who can confirm that. But don't we put the  
22 transcripts online? They go up on the website. You'll be  
23 able to see them from anywhere.

24 MR. SINGH: So when you're traveling on work, you  
25 don't get time actually.

1 HEARING OFFICER CELLI: I understand.

2 MR. SINGH: When you're traveling towards east  
3 coast it's very hard. Trust me on that.

4 HEARING OFFICER CELLI: I do trust you. I  
5 understand that. You know, the problem with that is that  
6 we do every thing we can to accommodate the parties and  
7 keep the ball rolling and keep this project going forward.  
8 We are under an obligation to get this -- to complete our  
9 process within a year and we're way beyond that. So this  
10 case has dragged. And we need to speed up and make up for  
11 lost time.

12 MR. SINGH: So one week will not fall behind.  
13 One week --

14 MR. WHEATLAND: I was just going to say if the  
15 transcripts are available by the end of this week, then  
16 ten days would make the opening brief due March 21 and the  
17 briefs would be due March 28th.

18 HEARING OFFICER CELLI: There was a request for  
19 two weeks, which we found reasonable. There was a further  
20 request for three weeks, which we're questioning.

21 MR. SIMPSON: Can I speak the that?

22 HEARING OFFICER CELLI: Go ahead, Mr. Simpson.

23 MR. SIMPSON: Thank you. I understand the  
24 concerns about this has gone over a year already. I don't  
25 think that's attributable to the intervenors and they

1 shouldn't be penalized in their time write these briefs.

2           HEARING OFFICER CELLI: You know something? The  
3 problem here is that it's not just an intervenor problem.  
4 All of the parties are going to have to submit all of  
5 their opening briefs on the same day and then all of the  
6 parties are going to submit their rebuttal on the same  
7 day. So it's not an intervenor versus applicant versus  
8 staff situation. The PERSON who gets penalized is me,  
9 because I'm the guy who was to write the decision and I  
10 need your briefs.

11           MR. SIMPSON: But it is the difference of  
12 situation with the intervenors. We have a bunch of  
13 volunteers here compared to paid professionals who can  
14 spend their working hours to do this project. We do our  
15 work or I do my work usually at this time of night. So I  
16 can't devote full time every day to this like a paid  
17 attorney can. And it doesn't sound like the other  
18 intervenors can. So it does a greater harm to the  
19 intervenors than it does the other parties. It's the  
20 intervenors that are penalized for their lack of  
21 experience, their lacks of resources. And for the year  
22 and a half that this thing has taken that hasn't been our  
23 fault.

24           HEARING OFFICER CELLI: Mr. Wheatland, you had a  
25 response?

1 MR. SIMPSON: I could use three weeks.

2 MR. WHEATLAND: We previously informed the  
3 Commission of our need for a decision in early May of 2011  
4 in order to be able to commence construction of this  
5 project prior in June of 2011. So I'm concerned that an  
6 extension of the briefs for two weeks will delay -- could  
7 potentially delay the issuance of the PMPD or delay  
8 issuance of a final decision in early May of 2011.

9 MR. DIGHE: I just want to say that I think I  
10 would also agree for three weeks because I also work in  
11 the night. So I just I cannot stop not seeing this  
12 because it takes time for sure.

13 MR. SIMPSON: It's Rob Simpson again. May I  
14 speak?

15 HEARING OFFICER CELLI: Go ahead, Mr. Simpson.

16 MR. SIMPSON: Thank you.

17 I understand the applicant is motivated to get  
18 the project on-line before the rules change, but there are  
19 plenty of other projects that are also anxious to get  
20 online. I looked at the briefing schedule for getting  
21 operational Carlsbad and how long that's gone. And I  
22 don't understand how this project qualifies for such a  
23 tight schedule compared to any other project.

24 HEARING OFFICER CELLI: Okay. Well, folks, today  
25 is March 7th. Two weeks from today would be March 21st.

1 However, the transcripts will be off -- is the ends of the  
2 week reasonable? If we say that the opening briefs are  
3 due two weeks after the availability of the transcript and  
4 ultimately it actually gives the parties three weeks  
5 because it's going to take about a week for the transcript  
6 to be available. So --

7 MR. SINGH: That doesn't make logic. For week we  
8 will not be doing anything. We can only work once the  
9 transcript is available; right?

10 HEARING OFFICER CELLI: That's not true. You've  
11 already written briefs, et cetera. You already know what  
12 the issues are.

13 MR. WHEATLAND: And the transcripts are already  
14 available for the first two days of hearings. Those have  
15 already been released.

16 HEARING OFFICER CELLI: That's true.

17 MR. WHEATLAND: And the Committee admonished the  
18 parties repeatedly there will be a briefing schedule and  
19 admonished the parties there wouldn't be any further  
20 extension or delays in this proceeding.

21 HEARING OFFICER CELLI: So it seems reasonable if  
22 we go with the two weeks opening briefs due two weeks  
23 after the notice of availability followed by a one week  
24 rebuttal that that I think is a happy medium for all  
25 parties. So it's greater than the ten days we initially

1 were talking about, but it's less than three weeks. And  
2 yet you still get the benefit of the time between now and  
3 the availability of the transcript. So the order would  
4 then be opening briefs due two weeks after availability of  
5 the final transcript, today's transcript.

6 MR. SINGH: Do we have to file a motion to get  
7 three weeks.

8 HEARING OFFICER CELLI: No.

9 MR. SINGH: We are heading nowhere, sir.

10 HEARING OFFICER CELLI: Don't bother filing a  
11 motion, sir.

12 MR. SINGH: The whole entire process as a  
13 minority racial minority we have been suffering, sir. And  
14 now is the first time we are not an expert. We don't have  
15 any resources. And we are taking the time. We are doing  
16 the job. We are doing these things. Applicant is full  
17 time working. You guys are full time working. Staff is  
18 full time working. And why this burden we have to bear?  
19 Why this burden we have to bear? Why not the burden to be  
20 borne by other people, you know? One week, sir, in a  
21 project that is delayed by another six months will -- the  
22 sky will not fall on the earth, you know.

23 MR. WHEATLAND: Actually, if I may, the sky will  
24 fall if we can't get a decision from the Commission in  
25 early May of 2011.

1 MR. SINGH: Then what will happen?

2 HEARING OFFICER CELLI: You know, the problem  
3 isn't so much -- of it's on my shoulders to get the  
4 decision out. So it's a convenience to me that I get your  
5 briefs so that we can get the decision written.  
6 Otherwise, I'm sitting around twiddling my thumbs waiting  
7 for your briefs. So I two weeks plus the time it takes  
8 for the transcript to come out is plenty. That's  
9 practically three weeks any way. And then a one week  
10 after that for rebuttal briefs. And we will -- I will put  
11 out an order to that effect.

12 MR. SINGH: So let me tell you, I will be out for  
13 a week on the first.

14 HEARING OFFICER CELLI: May I make a suggestion,  
15 Mr. Singh? I thought you did a good job of taking  
16 advantage of Mr. Sarvey's experience, you and Mr. Dighe  
17 have similar interests. You might want to consider a  
18 division of labor. You might want to work together and  
19 see what you can do. If you can't -- that would be my  
20 suggestion. There's nothing that says you can't do that.  
21 In fact, we encourage it. I think you probably have  
22 better briefs. Two heads are better than one. Three are  
23 better than two.

24 So with that, that would be the order.

25 STAFF COUNSEL WILLIS: Mr. Celli may I just

1 request when you put out your notice you actually put the  
2 dates instead of just two weeks so we're all on the same  
3 exact page of when things are due?

4 HEARING OFFICER CELLI: I'll tell you what. If  
5 the transcripts come in time that I get the order out if  
6 you want me to wait for the order --

7 STAFF COUNSEL WILLIS: Well, I just want to make  
8 sure that we all know exactly. Because we didn't actually  
9 know that there were transcripts available yet. So not  
10 all of us are checking a website every day.

11 HEARING OFFICER CELLI: I will put that order out  
12 as soon as -- I'll actually send out a written orders  
13 after the transcripts get to me and then I can actually  
14 put the dates in.

15 MR. SINGH: So may I ask you one question?

16 HEARING OFFICER CELLI: Yes, go ahead.

17 MR. SINGH: Is there some reason some sort of new  
18 rules that are coming that can delay this process? That's  
19 in our applicant want to get rid of this before some  
20 deadline or --

21 HEARING OFFICER CELLI: If you want to respond.

22 MR. SINGH: If they can be open candid about this  
23 I would really appreciate it.

24 HEARING OFFICER CELLI: Any response from  
25 applicant?



1           MR. WHEATLAND: No response. Mr. Sarvey can  
2 explain it to you after the hearing.

3           HEARING OFFICER CELLI: Okay. We're under the  
4 gun to get this PMPD out. And we are obligated under our  
5 regulations to get it out in a year and we're well over  
6 that. So we are eager to get moving, on it. For the  
7 record, I have Rob Simpson is still on the line. Lynn  
8 Sadler is with the public adviser's office. I've got the  
9 recording. The only person left who I need to unmute at  
10 this time is Simone Estavilla. Did you wish to make a  
11 comment?

12          MR. ESTAVILLA: Yes. (inaudible)?

13          HEARING OFFICER CELLI: Can you are you on a cell  
14 phone?

15          MR. ESTAVILLA: No.

16          HEARING OFFICER CELLI: You're using your  
17 receiver because we're having a hard time hearing you. We  
18 need you to speak clearly and speak up.

19          MR. ESTAVILLA: I'm sorry. Can you hear me now?

20          HEARING OFFICER CELLI: Much better.

21          MR. ESTAVILLA: I'll just listen again. I don't  
22 have any comments at this time. Thank you.

23          HEARING OFFICER CELLI: Thank you.

24          There are no members of the public who are here  
25 tonight. We've gone through all the people on the phones.

1 So that's it on public comment. I'm going to hand the  
2 meeting back to Commissioner Douglas to adjourn.

3 COMMITTEE MEMBER DOUGLAS: Thank you, Mr. Celli.

4 I'd like to thank all of the parties for sticking  
5 with us through a long day and a long night. And  
6 particularly those of you who had potential conflicts who  
7 made the real effort to be here, it was noted and  
8 appreciated. So with that, we're adjourned.

9 (Thereupon the hearing adjourned at 12:41 p.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing hearing was reported in shorthand by me,  
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing nor in any  
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 11th day of March, 2011.

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